

# **SHADOW REPORT ON ANTI-DISCRIMINATION**

Skopje, 2012

Exchange of EU best practices in the area of anti-discrimination  
legislation enforcement

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## List of abbreviations

CAD.....	Commission for Protection against Discrimination, (Commission against Discrimination)
CED.....	Center for Economic Development
CEOWM....	Commission for Equal Opportunities between Women and Men
CIR .....	Commission for Interethnic Relations
CoE .....	Council of Europe
CRPM .....	Center for Research and Policy Making
CSOs .....	Civil Society Organizations
DEO .....	Department for Equal Opportunities
ECHR.....	European Convention on Human Rights
FTU .....	Federation of Trade Unions
GFP .....	Gender Focal Points
ILO .....	International Labour Organization
LGBT .....	Lesbian, Gay, Bisexual, Transexual
LPPD .....	Law on Prevention and Protection against Discrimination
MLSP.....	Ministry of Labor and Social Policy
MoES .....	Ministry of Education and Science
MWD .....	Coalition Macedonia without Discrimination
OEM.....	Organization of Employers of Macedonia
OFA.....	Ohrid Framework Agreement
OSCE .....	Organization for Security and Cooperation in Europe
SEI.....	State Education Inspectorate
SEN .....	Special Educational Needs

# Introduction

The right to non-discrimination is recognised *inter alia* by the main international instruments such as the Universal Declaration of Human Rights, the UN Covenant on Civil and Political Rights, the UN Convention on Economic, Social and Cultural Rights, the UN Convention on the Elimination of Racial Discrimination, and ILO Convention No 111. The provisions on non-discrimination contained in the European Convention on Human Rights and Fundamental Freedoms were reinforced by the entry into force of a new Protocol 12<sup>1</sup> to that Convention, which provides for a free-standing right to equal treatment. There has also been considerable international interest in recent developments within the EU, whose anti-discrimination current legislation is among the most advanced in the world and is widely regarded as an effective model.

The principles of equal treatment and non-discrimination are at the heart of the European social model. They represent a cornerstone of the fundamental rights and values that underpin today's European Union. Much has been done in the short space of time since Member States agreed on the need for concerted action at European level to tackle discrimination on grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation. European legislation has significantly raised the level of protection against discrimination across the EU. It has acted as a catalyst for the development of a more coherent, rights-based approach to equality and non-discrimination.

The EU's anti-discrimination agenda to date has benefited from contributions from a range of stakeholders, including national authorities, the European Parliament, labour and management organisations, NGOs, regional and local authorities, the Committee of the Regions, academic experts and the European Union Monitoring Centre on Racism and Xenophobia.

The Republic of Macedonia – along with other Western Balkans countries – was identified as a potential candidate for EU membership during the Thessaloniki European Council summit in 2003. The country applied for EU membership in March 2004. The Commission issued a favourable opinion in November 2005, and the Council decided in December 2005 to grant the country candidate status. In October 2009, the Commission recommended that accession negotiations be opened. Since then the EU provides ongoing guidance to the national authorities on reform priorities through the **Accession Partnership and the regular EC Progress Reports**. Based on the latter the government adopted its annual revision of the national programme for the adoption of the *acquis*. Within that programme implementation the government of Macedonia puts consistent

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<sup>1</sup> Protocol 12 to European Convention on Human Rights and Fundamental Freedoms entered into force on 1 of April 2005.

efforts to align its national legislation with that of the EC in the context of the EU accession negotiations. The anti-discrimination policy area falls into the EC political criteria (human rights and protection of minorities, economic and social rights) and the ability of the country to cope with the competitive pressure and market forces within the Union (Chapter 16 Taxation, Chapter 19 Social policy and employment, Chapter 23 Judiciary and fundamental rights).

Since the European integration process started, the issue of anti-discrimination, as part of Macedonia's efforts to meet the EU accession political criteria, has slowly progressed on the government agenda and has mainly been driven by the prospect of and progress towards the EU membership. In the previous decade the country made significant progress towards minorities' rights protection. Notably the rights granted with the Ohrid Framework Agreement, greatly enhanced the national legislative and institutional framework on equal opportunities for members of different ethnic communities, while the Equal Opportunities Law and the related strategies strengthened the gender sensitive policy making. Although there were several laws which explicitly or implicitly outlawed discrimination, the country lacked a specific law which exclusively deals with anti-discrimination.

The Law on Prevention and Protection against Discrimination {hereinafter: LPPD or Law against Discrimination} was adopted in 2010 following the European Union's critique for lack of governmental commitment to regulate this field. The Law against Discrimination provisioned the establishment of an independent Commission for Protection against Discrimination {hereinafter: Commission against Discrimination or CAD} and hence provided additional mechanism for protection. The purpose of this report is to provide a critical overview of the legal amendments in the Macedonian national legislation against the European, and to examine all institutions and bodies empowered to receive and act upon individual petitions, and review the situation with anti-discrimination policies and their implementation within four sectors (education, health, domestic violence and employment). Acknowledging the importance of solid anti-discrimination policies and effective mechanisms for rights protection, this report focuses on the Law on Prevention and Protection against Discrimination, the level of its alignment with the EC directives and policies, as well as the effectiveness of enforcement practices.

The report contains four main sections. The first section provides overview of the European legislation in the anti-discrimination field. It also deals with the national legal and institutional framework on anti-discrimination and closely examines specific national laws which contain anti-discrimination provisions as well as the institutions and bodies empowered to act upon individual petitions. The second section concentrates specifically on the Law on Prevention and Protection against Discrimination and examines its legal and institutional challenges vis-à-vis its alignment with the respective EC directives and policies in

the field and overall enforcement. The third section covers four sample national sectoral policies contents and cross cutting elements reflected in them in the area of gender and social inclusion, supported by selected individual case studies. The last section summarizes the main findings and conclusions the authors came up with in the course of the current report elaboration and also offers a set of targeted policy recommendations to different national parties engaged in the process of the national anti-discrimination legislation enforcement and improvement.

The report serves the following objectives:

- *To undertake an in-depth cross cutting analysis*, from a gender and social inclusion perspectives, of the legislative, practical, societal and sectorial environments referring to four national policy domains such as education, employment, health and domestic violence in which cases of discrimination on various grounds are most frequently registered.
- *To analyze the level of operational capacities* of central and local authorities, CSOs, private companies, employers' organizations and the national Commission against Discrimination to help align fully the national anti-discrimination law with the EC acquis, secondary legislation and policies and to advance its overall enforcement.
- *To develop policy recommendations* to all relevant to the anti-discrimination policy domain national stakeholders such as policy makers, legislators, private institutions and individual citizens on how to further improve and coordinate national initiatives towards the effective national anti-discrimination law enforcement.

The report methodology combines a mixture of analytical tools with proven efficiency, which among others include the following:

- *Desk research*: Overview of European and national legislation on anti-discrimination. Analysis of major Council of Europe and EU documents such as: Treaties, Charters, Conventions, and Directives as well as critical overview of the national legal framework, annual reports of the relevant establishments and institutional setup.
- *Individual semi-structured in-depth Interviews*: The field research encompassed all eight regions of the country and included visits to thirteen municipalities as well as electronic communication with three rural municipalities. A total number of 39 semi-structured interviews were conducted with: Presidents of Regional Courts, Regional Ombudsman's Offices, Coordinators/Members of municipal commissions for equal opportunities (between women and men), Coordinators/members of municipal commissions for inter-ethnic relations, Representatives of



local non-governmental organizations and Representatives of Regional Branches of Trade Unions. The questionnaires were composed of 36 questions, structured in four sections inquiring: personal data, knowledge of national institutional and legal framework, personal experience and perception of discrimination.

- *Consultations with Stakeholders:* A total number of 10 consultations with representatives of the Ministry of Labor and Social Policy, Government of Republic of Macedonia: Secretariat for European Affairs, Parliamentary Commission for Equal Opportunities between Women and Men, Commission against Discrimination, Ombudsman's Office, Trade Unions, Employers' Organization of Macedonia as well as non-governmental organizations were held.
- *Requests for information:* Requests were sent to the Commission against Discrimination, the Legal Representative at the Ministry for Labor and Social Policy, as well as to the Ministry of the Interior, Ministry of Justice and Ministry of Education and Science.
- *Location of the research:* The research was conducted in eight regions on the territory of the Republic of Macedonia: Eastern, Northeastern, Pelagonia, Polog, Greater Skopje, Southeastern, Southwestern, and Vardar. The main research data were gathered, analysed and consolidated in the period February – May 2012.

## **1. Setting the scene for enforcement of anti-discrimination policies in Macedonia**

### **1.1. Legal framework**

#### **1.1.1. The objective to achieve: overview on the main EU anti-discrimination legislation**

The main sources of European non-discrimination law are the European Convention on Human Rights (ECHR) and EU law. These two systems have separate origins both in terms of when they were created and why. The ECHR protects all individuals within the jurisdiction of its 47 States parties, whereas the EU non-discrimination directives only offer protection to citizens of the 27 EU member states.

#### ***European Convention on Human Rights***

The prohibition on discrimination is guaranteed by **Article 14 of the ECHR**, which guarantees equal treatment in the enjoyment of the other rights set down in the Convention. **Protocol 12 (2000)** to the ECHR, expands the scope of the prohibition of discrimination by guaranteeing equal treatment in the enjoyment of any right

(including rights under the national law). According to the Explanatory Report to the Protocol, it was created out of a desire to strengthen protection against discrimination which was considered to form a core element of guaranteeing human rights.

The principle of non-discrimination is a governing principle in a number of Council of Europe (CoE) documents. The 1996 version of the **European Social Charter** includes both the right to equal opportunities and equal treatment in matters of employment and occupation, protecting against discrimination on the grounds of sex (Article 20 and Article E in Part V). Additional protection against discrimination can be witnessed in the **Framework Convention for the Protection of National Minorities** (Articles 4, 6(2) and 9.), in the CoE **Convention on Action Against Trafficking in Human Beings** (Article 2(1)) and in the CoE **Convention on the Access to Official Documents**. There is also protection against the promotion of discrimination in the **Additional Protocol to the Convention on Cybercrime**. The issue of non-discrimination has clearly been influential in the shaping of legislative documents produced by the CoE and is seen as a fundamental freedom that needs to be protected.

### ***The European Union and the non-discrimination directives***

Two directives were adopted in 2000: **Directive 2000/78/EC** prohibits discrimination on the basis of *sexual orientation, religious belief, age and disability* in the area of employment; **Directive 2000/43/EC** prohibits discrimination on the basis of *race or ethnicity* in the context of employment, but also in accessing the welfare system and social security, and goods and services. This is a significant expansion of the scope of non-discrimination law under the EU, which recognises that in order to allow individuals to reach their full potential in the employment market, it is also essential to guarantee them equal access to areas such as health, education and housing. In 2004, **Directive 2004/113/EC** expanded the scope of *sex discrimination* to the area of goods and services. However, protection on the grounds of sex does not quite match the scope of protection under the Racial Equality Directive, since **Directive 79/7/EEC** guarantees equal treatment in relation to social security only and not to the broader welfare system, such as social protection and access to healthcare and education.

Although sexual orientation, religious belief, disability and age are only protected grounds in the context of employment, a proposal to extend protection for these grounds to the area of accessing goods and services (known as 'Horizontal Directive') is currently being debated in the EU institutions.

In recognizing that its policies could have an impact on human rights, the EU and its member-states proclaimed the **EU Charter of Fundamental Rights in 2000**. The Charter contains a list of human rights, inspired by the rights contained in the constitutions of the member states, the ECHR and universal

human rights treaties such as the UN Convention on the Rights of the Child. When the **Treaty of Lisbon** entered into force in 2009, it altered the status of the Charter of Fundamental Rights to make it a legally binding document. As a result, the institutions of the EU are bound to comply with it. The EU member-states are also bound to comply with the Charter, but only when implementing EU law.

The aim of non-discrimination law is to allow all individuals equal and fair prospect to access opportunities available in a society. Firstly, it stipulates that those individuals who are in similar situations should receive similar treatment and not be treated less favourably simply because of a particular 'protected' characteristic that they possess. This is known as 'direct' discrimination. Secondly, non-discrimination law stipulates that those individuals who are in different situations should receive different treatment to the extent that this is needed to allow them enjoy particular opportunities on the same basis as others. Thus, those same 'protected grounds' should be taken into account when carrying out particular practices or creating particular rules. This is known as 'indirect' discrimination (**Employment Equality Directive, Article 2(2)(a); Gender Equality Directive (Recast), Article 2(1)(a); Gender Goods and Services Directive, Article 2(a)**). At the heart of direct discrimination is the difference in treatment that an individual is subject to. Consequently, the first feature of direct discrimination is the evidence of unfavourable treatment. For example - refusal to enter a restaurant or a shop; receiving a smaller pension or lower pay; being subject to verbal abuse or violence. Unfavourable treatment will be relevant to making a determination of discrimination where it is unfavourable by comparison to someone in a similar situation. A complaint about 'low' pay is not a claim of discrimination unless it can be shown that the pay is lower than that of someone employed to perform a similar task by the same employer. Therefore a 'comparator' is needed: that is, a person in materially similar circumstances, with the main difference between the two persons being the 'protected ground': *sex, sexual orientation, disability, age, race, ethnic origin, national origin and religion or belief*.

EU law acknowledges that discrimination may result not only from treating people in similar situations differently, but also from offering the same treatment to people who are in different situations. This is labelled 'indirect' discrimination because it is not the treatment that differs but rather the effects of that treatment, which will be felt differently by people with different characteristics. **Article 2(2)(b) of the Racial Equality Directive** states that 'indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons' (**Employment Equality Directive, Article 2(2)(b); Gender Equality Directive (Recast), Article 2(1)(b); Gender Goods and Services Directive, Article 2(b)**.) The first identifiable requirement is an apparently neutral rule, criterion or practice. In other words, there must be some form of requirement

that is applied to everybody. The second identifiable requirement is that the apparently neutral provision, criterion or practice places a 'protected group' at a particular disadvantage. This is where indirect discrimination differs from direct discrimination in that it moves the focus away from differential treatment to look at differential effects. As with direct discrimination, a comparator is still needed in order to determine whether the effect of the particular rule, criterion or practice is significantly more negative than those experienced by other individuals in a similar situation.

### ***Harassment and instruction to discriminate under the EU non-discrimination directives***

A prohibition on harassment and on instruction to discriminate as part of EU non-discrimination law are relatively new developments, which were introduced to allow for more comprehensive protection. Harassment is featured as a specific type of discrimination under the EU non-discrimination directives. It has previously been dealt with as a particular manifestation of direct discrimination. Its separation into a specific head under the directives is based more on the importance of singling out this particularly harmful form of discriminatory treatment, rather than on a shift in conceptual thinking. The Gender Equality Directives also specifically set out *sexual harassment* as a specific type of discrimination, where the unwanted 'verbal, non-verbal, or physical' conduct is of a 'sexual' nature (**Gender Goods and Services Directive, Article 2(d); Gender Equality Directive (Recast), Article 2(1)(d)**). According to this definition, there is no need for a comparator to prove harassment. This essentially reflects the fact that harassment itself is wrong because of the form it takes (verbal, non-verbal or physical abuse) and the potential effect it may have (violating human dignity). Although the non-discrimination directives do not oblige member states to use criminal law to address acts of discrimination, a Framework Decision of the European Council does oblige all EU member states to provide for criminal sanctions in relation to incitement to violence or hatred based on race, colour, descent, religion or belief, national or ethnic origin, as well as dissemination of racist or xenophobic material and condonation, denial or trivialisation of genocide, war crimes and crimes against humanity directed against such groups (**Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law**). Member states are also obliged to consider racist or xenophobic intent as an aggravating circumstance. It is quite probable, therefore, that acts of harassment and acts of incitement to discriminate, in addition to constituting discrimination, may well be caught under national criminal law, particularly where they relate to race or ethnicity. Example: in a case before the Bulgarian courts, a member of parliament made several statements verbally attacking the Roma, Jewish and Turkish communities as well as 'foreigners' in general. He stated that these communities were preventing Bulgarians from running their own state, were committing crimes with impunity and depriving Bulgarians of

adequate healthcare, and urged people to prevent the state from becoming a 'colony' of these various groups. The Sofia Regional Court found that this amounted to harassment as well as instruction to discriminate (Sofia Regional Court, Decision No. 164 on Civil Case No. 2860/2006, 21 June 2006).

### ***'Positive actions'***

As noted above, in cases of indirect discrimination, the reason that discrimination is found to occur is due to the fact that the same rule is applied to everyone without consideration of relevant differences. In order to remedy and prevent this kind of situation, governments, employers and service providers must ensure that they take steps to adjust their rules and practices to take such differences into consideration – that is, they must do something to adjust current policies and measures. In the EU law the context refers to a 'positive action'. By taking special measures, governments are able to ensure 'substantive equality', that is, equal enjoyment of opportunities to access benefits available in society, rather than mere formal equality' (**Racial Equality Directive, Article 5; Employment Equality Directive, Article 7; Gender Goods and Services Directive, Article 6; Gender Equality Directive (Recast), Article 3.**) **Article 5 of the Employment Equality Directive** for example contains specific articulations of the general rule of specific measures in relation to persons with disabilities, which requires employers to make reasonable accommodation to allow those with physical or mental disabilities to be given equal employment opportunities. This is defined as 'appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer'. This might include measures such as installing a lift or a ramp or a toilet for disabled persons in the workplace in order to allow wheelchair access.

### ***Protection from discrimination under the EU non-discrimination directives***

Protection from discrimination under the EU non-discrimination directives has a varied scope. It extends to three areas: *employment*, the *welfare system*, and *goods and services*. Currently, **Directive 2000/43/EC** applies to all three areas. **The Gender Equality Directive (Recast)** and the **Gender Goods and Services Directive** apply to employment and access to goods and services but not to access to the welfare system.

Protection against discrimination in the field of *employment* is extended across all the protected grounds provided under the non-discrimination directives and covers access to employment, (The concept of 'access to employment' has been interpreted by the ECJ (ECJ, *Meyers v. Adjudication Officer*, Case C-116/94 [1995] ECR I-2131, 13 July 1995.): Conditions of employment, including dismissals and pay, Access to vocational guidance and training, Worker and employer

organizations. The last one not only deals with membership and access to a worker or employer organization, but also covers the involvement of persons within these organizations.

Of the non-discrimination directives, only **Directive 2000/43/EC** provides broad protection against discrimination in accessing *the welfare system and other forms of social security*. Encompassed within this is the access to benefits in kind that are held in common by the state such as public healthcare, education and the social security system. However, the **Gender Social Security Directive** does establish the right of equal treatment on the basis of sex in relation to the narrower field of social security. Protection from discrimination in the field of *access to the supply of goods and services, including housing*, applies to the grounds of race through **Directive 2000/43/EC**, and to the grounds of sex through the **Gender Goods and Services Directive**. **Article 3(1) of the Gender Goods and Services Directive** gives more precision to this provision, stating that it relates to all goods and services ‘which are available to the public irrespective of the person concerned as regards both public and private sectors, including public bodies, and such offered outside the area of private or family life and the transactions carried out in this context’. It excludes, in Paragraph 13 of the Preamble, application to ‘the content of media or advertising’ and ‘public or private education’, though this latter exclusion does not narrow the scope of the **Racial Equality Directive**, which expressly covers education.

The **Gender Social Security Directive** provides for equal treatment on the basis of sex in relation to ‘*statutory social security schemes*’. Article 1(3) defines these as schemes which provide protection against *sickness, invalidity, old age, accidents at work and occupational diseases*, and *unemployment*, in addition to ‘social assistance, in so far as it is intended to supplement or replace’ the former schemes.

The scope of the protection from discrimination in the field of healthcare relates to access to publicly provided healthcare at the point of delivery, such as treatment accorded by administrative and medical staff. Presumably, it shall also apply to insurance where health services are provided privately, but patients are reimbursed through a compulsory insurance scheme.

The ECHR contains an open-ended list of protected grounds. Anyone can invoke the ECHR before domestic authorities and courts. Third-country nationals also enjoy the right to equal treatment across broadly similar areas covered by the EU non-discrimination directives where they qualify as ‘long-term residents’ under **Directive 2003/109/EC**. Where third-country nationals do not qualify as ‘long-term residents’, they enjoy limited protection under the non-discrimination directives on grounds of *sexual orientation, age, disability or religion or belief* in their right of access to vocational training and conditions of work. However, they do not enjoy an equal right of access to employment. According to **Directive**

**2004/113/EC** and the **Gender Equality Directive** (Recast), third-country nationals enjoy protection from *sex discrimination* in accessing employment and goods and services.

### **1.1.2. The status of development of Macedonian anti-discrimination legislation**

Prior to 2010 there was no specific law against discrimination. This by no means implies that discrimination was permitted. Scattered in different legislative acts, enjoying different status, the principle of non-discrimination was to some extent existent in the national legal framework. The following section examines different national acts which contained anti-discrimination provisions, many of which were stipulated even prior to the adoption of the LPPD.

#### ***Constitution of the Republic of Macedonia***

The prohibition against discrimination and the promotion of equality play a vital role in the enforcement of the system of human rights protection. In the Republic of Macedonia the prohibition against discrimination is placed at the highest level in the legal framework. The principle of equality is incorporated in the Preamble of the Constitution of the Republic of Macedonia {hereinafter: the Constitution}, as well as Article 9 which states that citizens are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and the laws. The Constitution as the highest legal act also stipulates equal enjoyment of the basic freedoms and rights for foreigners who are on the territory of the Republic of Macedonia.<sup>2</sup> Besides the general provision for protection against discrimination, the Constitution also guarantees equality in fulfillment of the rights of employment and guarantees everyone equal access to any job place<sup>3</sup> as well as equal access to education.<sup>4</sup> Further, the Constitution also provides protection to special categories of people, women during maternity, children, children without parental care, minorities, etc.<sup>5</sup> In case of violation of their freedoms and rights, all citizens have the right to an effective legal remedy before the courts and the Constitutional Court of the Republic of Macedonia, in a procedure based on the principle of priority and urgency.<sup>6</sup> The rights and freedoms guaranteed in the Constitution may be limited but this cannot be done in a discriminatory manner on grounds of gender, race, color of skin, language, religion, nation or social origin, property or

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<sup>2</sup> Article 29, Constitution of the Republic of Macedonia

<sup>3</sup> Ibid., Article 32.

<sup>4</sup> Ibid., Article 44, (2).

<sup>5</sup> Ibid., Article 40, Article 42, Article 48

<sup>6</sup> Ibid., Article 50.



social status.<sup>7</sup> The provision of the Constitution that prohibits discrimination on various grounds contains a closed list of discriminatory grounds. This can impose limits on the implementation of the provisions for protection against discrimination. The constitutional provisions that guarantee both the freedoms and rights of a person, and equality, are further regulated in separate specific laws and bylaws in a number of different areas. Each of the adopted laws has to be in accordance with the Constitution. This means that a law cannot provide lower protection than the Constitution but may guarantee a wider list of freedoms and rights of those stipulated in the Constitution. This section of the report analyzes specific laws that contain wider lists of grounds protected against discrimination; some of those are open lists and refer to other legal documents prohibiting discrimination.

### ***Law on Prevention and Protection against Discrimination***

In order to strengthen the prohibition against discrimination and bring the national legislation in compliance with the law of the European Union, the Law on Prevention and Protection against Discrimination was adopted in April 2010, and its enforcement started on 1-st January, 2011. In the preparatory phase of this law, prior to its adoption, there were many debates on its quality, its compliance with the Constitution and the international documents as well as with EU legislation. At a time when Macedonia for the first time adopted a general law against discrimination in a process in which different opinions were expressed, it is unclear whether this law could fulfill its goal i.e. provide effective, efficient, and impartial protection against discrimination. To provide the answer to this question, it is necessary to analyze the provisions of the law.

The aim of the law is to provide for the prevention and protection against discrimination in fulfillment of the rights guaranteed in the Constitution, the national laws and the ratified international agreements.<sup>8</sup> The provision which regulates the implementation of the law stipulates: “the prevention and protection against discrimination shall be applicable to all physical and legal persons in the process of exercising the rights and freedoms guaranteed by the Constitution and the legislation of the Republic of Macedonia”.<sup>9</sup> This provision limits the applicability of the law only to the grounds against discrimination enumerated in the Constitution and the laws, and does not provide an opportunity to apply the ratified international agreements, nor the extensive case law of the European Court of Human Rights. Further, the Law on Prevention and Protection against Discrimination broadens the applicability of the provisions against discrimination to all natural and legal entities, regardless

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<sup>7</sup> Ibid., Article 54.

<sup>8</sup> Article 1, Law on Prevention and Protection against Discrimination, Official Gazette of RM, 50/2010.

<sup>9</sup> Ibid., Article 2.



of whether they are state bodies or institutions with public authorities.<sup>10</sup> Until the adoption of this law, the Constitution provided only for judicial protection on legality of individual acts of the state administration and other institutions with public authorities.<sup>11</sup>

Special public attention was given to the grounds against discrimination enumerated in LPPD. Article 3 prohibits direct and indirect discriminations, invocation and stimulation to discrimination and helping in discriminatory treatment on the grounds of sex, race, skin color, gender, belonging to marginalized group, ethnic origin, language, citizenship, social origin, religion or confession, other types of belief, education, political affiliation, personal or social status, mental and physical disability, age, family or marital status, property status, health condition or on any other grounds established by the law or by ratified international agreements.<sup>12</sup> This provision includes the ratified international agreements, not mentioned in the law itself. Nevertheless, a major setback on the legal framework against discrimination was the intentional exclusion of sexual orientation from the list of discriminatory grounds in the final draft of the law which was later adopted. It is important to note that in 2008 the Parliament adopted the Law on Patients' Rights where Article 5 among the other discriminatory grounds, enumerated sexual orientation as such.<sup>13</sup> The adoption of the LPPD is a part of the process of harmonization of the national with the EU legislation. The Republic of Macedonia has an obligation to transpose the EU Directives<sup>14</sup>, which guarantee protection against discrimination on the grounds of sexual orientation. The directives indicate that in order to achieve complete equality in practice, a lot more than mere prohibition of ongoing or future discrimination is necessary. The directives allow member states to introduce specific measures to prevent and compensate the disadvantages which groups have suffered on the grounds of sex, race, ethnic origin, religion or beliefs, disability, age or sexual orientation. The incorporation of sexual orientation as discriminatory grounds is one of the conditions for EU membership, therefore it is necessary to expand the list of discriminatory grounds and incorporate this

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<sup>10</sup> Ibid., Article 2 and Article 4.

<sup>11</sup> Article 50, Constitution of the R. Macedonia.

<sup>12</sup> Article 3, Law on Prevention and Protection against Discrimination.

<sup>13</sup> Article 5 (2), Law on Protection on Rights on Patients, Official Gazette of the Republic of Macedonia no. 82/08 from 08.07.2008.

<sup>14</sup> Article 13 of the Agreement of establishment of the European Community, which authorizes the EU to undertake measures against discrimination on the grounds of sex, race, ethnic origin, religion or beliefs, disability, age or sexual orientation. Direct and indirect discrimination on grounds of sexual orientation in employment, vocational training, are prohibited with Directive 2000/78/EC.

ground in LPPD.<sup>15</sup> It is also necessary to incorporate gender identity and gender expression, as grounds protected against discrimination in order to provide recognition of LGBT<sup>16</sup> community in the legal framework against discrimination in Macedonia. This law, however, for the first time defines marginalized community and provides opportunity for protection against discrimination on the ground of belonging to a marginalized group.

### ***Law on Equal Opportunities between Women and Men***

In 2006 the law which regulates the general and specific measures for establishment of equal opportunities between women and men was enacted.<sup>17</sup> In 2009 several amendments to the law were adopted and provided definition of direct and indirect discrimination, harassment and sexual harassment, and hence harmonized these terms with the definitions used in the EU Directives that regulate the equal rights of women and men. In addition, the penal and the criminal, that is the misdemeanor provisions of the law were amended. In 2011, the Ministry of Labor and Social Affairs initiated the process of changes to the current law but due to the large number of amendments and supplements, the development of a new law started. In 2012 the new Law on Equal Opportunities between Women and Men was adopted and it included protection against discrimination in more situations. According to this law, discrimination on the grounds of sex is every differentiation, exclusion or limitation on the grounds of gender which endangers or hinders the recognition, fulfillment or practice of human rights and basic freedoms on the basis of equality between women and men in political, economic, social, cultural and civil and other areas. The definition of discrimination contains a list of grounds which recognize that women and men may be discriminated in different areas. This law also continues the trend of not including the sexual orientation and the gender identity. The Law on Equal Opportunities does not provide opportunity for direct protection on the grounds of sexual orientation or gender identity. The new law, besides discrimination, also prohibits harassment and sexual harassment on the grounds of gender.

The Law on Equal Opportunities provides general legal framework on equal opportunities for women and men in all areas. Therefore, it is necessary to incorporate a provision that will enforce an obligation to harmonize current and

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<sup>15</sup> In the Progress Report for Macedonia from 2010 it is stipulated "There was partial progress in the area of anti-discrimination policy. A framework law has been enacted which contains a list of grounds of prohibited discrimination and establishes a commission for protection against discrimination. However the law omits 'sexual orientation' as grounds for discrimination and the law does not comply fully with the acquis". In the EC Progress Report for Macedonia for 2011 it was stated "however, the law on anti-discrimination remains to be fully aligned with the acquis. Discrimination on grounds of sexual orientation is still omitted."

<sup>16</sup> Acronym used for lesbian-gay-bisexual-transsexual persons.

<sup>17</sup> Law on Equal Opportunities between Women and Men, Official Gazette of the R. of Macedonia no. 66/06 of 29.05.2006.

future laws with the existent Law on Equal Opportunities between Women and Men. In this way the legal framework would be completed, the gender perspective included, and gender equality in the Macedonian legislation accomplished.

### ***Law on Social Protection***

The system of social protection in the Republic of Macedonia is based on the principle of humanism, social justice, and solidarity stipulated in the Constitution. According to Article 2 of the Law on Social Protection, social protection is defined as a system of measures, activities and policies for prevention and overcoming the basic social risks to which citizens are exposed during their lives; and it aims to decrease poverty and social exclusion and to strengthen capacities for their protection. The law prohibits direct or indirect discrimination on the basis of sex, race, skin color, national, ethnic, social, political, religious, cultural, language, property and social affiliation, disability and origin in fulfillment of their rights for social protection. In case of violation of the provisions of the law that prohibit discrimination, the person who considers himself/herself a victim of discrimination may initiate a procedure before the competent court and require a compensation for damages.<sup>18</sup> The burden of proof falls on the party about which there are facts and allegations that has acted in a discriminatory manner.<sup>19</sup>

The rights determined in the Law on Social Protection are guaranteed for special categories of vulnerable groups. In Article 58, among others, single mothers during pregnancy one month before labor and single parents with children up to three years of age<sup>20</sup>, are considered as persons incapable to work (in the context of the law). In cases when there are no adequate conditions for them to live with the family, or accommodation is necessary due to other reasons<sup>21</sup>, they may be accommodated in an institution for social protection. Due to its short-term nature, a limitation is imposed to single mothers in the last month of pregnancy as well as to single parents that are most often women. Namely, for pregnant women and single parents-users of the existent financial assistance there are limitation of this right. Single women parents, for the duration of the pregnancy, one month before labor, and single parents of children up to 3 years of age may use permanent financial allowance. These persons may receive financial allowance in the first three years of the child's life and for up to a total of three children. After this period they lose the right to such aid. This also includes cases when their social situation has not been changed, and as such it is restrictive for both women and children. If the social status has not been improved they have the opportunity to benefit from the right to social assistance in an amount which is significantly lower than that of the permanent

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<sup>18</sup> Law on Social Protection, Official Gazette of RM, 79/2009, Article 22.

<sup>19</sup> Ibid., Article 22 (2).

<sup>20</sup> Ibid., Article 58.

<sup>21</sup> Ibid., Article 43.

financial allowance. The right to a permanent financial allowance is limited and based on the number of children. Namely, the right to a permanent financial allowance is provided to single pregnant women and single parents but only up to their third child.<sup>22</sup> The beneficiaries of this allowance belong to the most endangered categories of citizens, who due to various reasons are not capable to work and provide for existence.<sup>23</sup> Hence, the lawmaker restricts the access to the right for permanent financial allowance to pregnant single mothers with 4 or more children and to single parents with over 3 children. With the new Law on Social Protection, the mother that has given birth to a fourth newborn baby delivered after January 1<sup>st</sup> 2009, has taken care of her children up to their eighteen years, is unemployed, and does not benefit from a pension right, after 62 years of age gains the right to benefit from a permanent financial allowance.<sup>24</sup>

### ***Law on Labor Relations***

The right to employment and the choice of employment is a right guaranteed with the Constitution, and further regulated with the Law on Labor Relations. This Law is important because it regulates the relations established between employees and employers with the signing of an employment agreement. In this law the EU directives in the work related sphere are transposed. In accordance to Article 6(1) of the law the employer must not treat the job seeker (job applicant) or employee unequally because of racial or ethnic origin, color, gender, age, health condition, that is, disability, religious, political or other belief, membership in unions, national or social origin, family status, property and financial situation, sexual orientation or other personal circumstances. The principle of equal treatment of women and men was established with the agreement of the European Community, especially with Directive 76/2007/EEC where the principle of equal treatment of women and men in relation to access to employment, vocational training, promotion, and working conditions are regulated. According to this directive, member states should strive to remove inequalities and promote equality between women and men, especially taking into consideration the fact that women are often victims of various forms of discrimination. The Republic of Macedonia with the enactment of the Law on Labor Relations has transposed this directive.<sup>25</sup>

In accordance with Article 24 of this law, the employer must not announce the vacancy only for men or only for women, unless the particular gender is

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<sup>22</sup> Article 66, Law on Social Protection, Official Gazette of RM, 79/2009.

<sup>23</sup> Ibid., Article 57.

<sup>24</sup> Ibid., Article 70.

<sup>25</sup> The principle of equal opportunity is incorporated in the text of the law and stipulates that both women and men must be provided with equal opportunities and equal treatment as related to the access to employment, including promotion, and work-related vocational training and professional training, working conditions, equal pay for equal work, occupational social security schemes, leave of absence, working hours, termination of employment contract, Article 6.

an essential requirement for carrying out the work. For the first time in the Macedonian legislation a provision that stipulates gender sensitive language was included in the text of the law, and the terms employee and employer written in male gender, have neutral meaning and apply both for men and women.<sup>26</sup> Despite the prohibition of general discrimination, the provisions of the law also prohibit harassment, sexual harassment and mobbing which the law classifies as physiological harassment at the work place.<sup>27</sup>

Provisions of the law refer to special protection and assistance to a specific category of employees, especially to the protection of disabled persons, elderly employees, pregnant women and women exercising any right of motherhood protection, as well as provisions referring to the special rights of parents, adoptive parents and dependents, which are neither considered discrimination nor can they be considered grounds for discrimination.<sup>28</sup> On the road towards EU membership in the process of legislation harmonization, the Republic of Macedonia has also the obligation to transpose Directive 2000/78/EC<sup>29</sup> that guarantees protection against discrimination in employment which specifically covers discrimination on the grounds of sexual orientation. In the Law on Labor Relations<sup>30</sup> in the provision on protection against discrimination the word “sexual direction” - in Macedonian language ‘*polova nasocenost*’ - was incorporated as a ground protected against discrimination. The incorporation of the “sexual direction”, caused the reactions of human rights activists, especially the one of the LGBT population, because such provision narrowed the meaning and implementation of the term sexual orientation. Sexual orientation contains a broader interpretation which encompasses different aspects of sexuality, so such term used does not provide complete regulation on discrimination on the grounds of sexual orientation in the work related sphere. As a result of the undefined term “sexual direction” the LGBT community may rely on protection provided by the law, on the grounds of “other personal characteristics”.<sup>31</sup> In the meanwhile, there were efforts for incorporating sexual orientation in the grounds protected from discrimination in the adoption of new laws, as well as in amendments to other older laws, especially in the field of social and health protection. Still, there was no will to regulate this issue in the national legislation.

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<sup>26</sup> Law on Labor Relations, Official Gazette of RM, 158/2010 Article 5(2).

<sup>27</sup> Ibid., Article 9 and 9A.

<sup>28</sup> Ibid., Article 8.

<sup>29</sup> Directive 2000/78/EC of the Council of 27 November 2000, for implementation of basic framework for equal treatment in employment and profession.

<sup>30</sup> Article 6 of the Law on Labor Relations, states that the employer must not treat the job seeker (job candidate) or the employee unequally because of racial or ethnic origin, color, gender, age, health condition, that is, disability, religious, political or other belief, membership in unions, national or social origin, family status, property and financial situation, sexual orientation or other personal circumstances.

<sup>31</sup> Report of the Macedonian Association for Free Sexual Orientation, Skopje, 2008.

## ***Criminal Code***

The prohibition against discrimination is articulated in a number of laws which envisage different discriminatory grounds on the basis of which the victims could allege protection. The Constitution proclaims freedoms and rights among which the prohibition against discrimination, but does not sanction those who violate above-mentioned rights. The Criminal Code provides protection under the threat of sanctioning violations of the declarative rights enumerated in the Constitution. Article 417 describes the characteristics of the crime: racial or other discrimination. This crime has three forms, in particular: violation of basic human rights and freedoms, acknowledged by the international community based on the difference in race, color of skin, nationality or ethnic origin (Article 417 (1)), prosecution of organizations or individuals because of their efforts for equality of the people (417 (2)) and spreading of ideas about the superiority of one race over another, or who advocate racial hate, or instigate racial discrimination (417 (3)). The perpetrators of criminal acts described in points 1 and 2 should be sentenced to imprisonment from 6 months to 5 years, while for violation of point 3 - to imprisonment from 6 months to 3 years.

Indirect incrimination of discrimination is to be found in the text of the Criminal Code, under the description of Other Criminal Acts. For instance, in the description of Criminal Act Torture and Other Cruel, Inhuman or Humiliating Activities and Punishments it is stipulated: while performing a duty, as well as whoever listed as an official person or based on his consent, uses force, threat or any other not allowed instrument or manner with the intent to extort confession or some other statement from the convicted, the witness, the expert or other person, or whoever causes another a severe physical or mental suffering in order to punish him for a crime committed or for a crime for which he or another person is a suspect, or to intimidate or force him to waive one of his rights, or whoever causes such suffering due to any type of discrimination, shall be sentenced to imprisonment of three to five years.<sup>32</sup> Further, in the description of Criminal Act Crimes against Humanity in Article 403-a among others it also incriminates discrimination and separation based on racial, national, ethnic, political, cultural or other basis. In case of negation, minimizing, approval or the justification of genocide, crimes against humanity, war crimes with the intent to instigate hate, discrimination or violence against a person or group of persons due to their national, ethnic or racial origin or religion, the offender shall be sentenced to imprisonment of at least four years.<sup>33</sup>

In the aspect of criminal legal responsibility in cases of discrimination the law lacks a wider list of protected discriminatory grounds for which protection or the responsibility of the offenders could be demanded. Bearing in mind that

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<sup>32</sup> Criminal Code of the Republic of Macedonia, Article 143.

<sup>33</sup> Ibid., Article 407.

Macedonia has signed international agreements that encompass a broader list of discriminatory grounds as well as international standards for protection against discrimination that are constantly been developed, it is necessary to follow the practice and widen the legal responsibilities for other forms of discrimination.

### ***Law on Child Protection***

Until the adoption of the Law on Child Protection in 2000, there were only the Constitution and the international agreements ratified by the country, especially the Convention on the rights of children, which dealt with discrimination of people younger than 18 years of age. The amendments of the Law on Child Protection of 2009 introduced provisions that prohibit discrimination of children in fulfillment of their rights and regulated the nature of protection. One of the primary principles in the implementation of the law is the exclusion of any kind of discrimination.<sup>34</sup> Further, the law prohibits direct and indirect discrimination<sup>35</sup> on the grounds of race, skin color, gender, language, religion, political or other belief, national, ethnic or social origin, cultural or other belonging, property, disability, birth or other status of the child or his/hers parent, or legal guardian.<sup>36</sup> Every citizen is obliged to report to a competent institution any form of discrimination of a child.<sup>37</sup> According to Article 9b (2) the prohibition of direct and indirect discrimination of children, relates to all institutions for social protection and social insurance, public institutions for children founded by the Government of the Republic of Macedonia, public institutions founded by the municipality, the municipalities in the city of Skopje and the private institutions for children founded by private and legal entities, legal entities registered as agencies for providing services upon calls, as well as private entities who conduct certain activities in the care and education of children as a professional activity. This provision may impose limits on the protection against discrimination in relation to third persons who are not included in the list of natural and legal persons enumerated in the law. In this context Article 9 (d), envisages an administrative procedure as procedure for protection against discrimination while it is known that administrative procedures are used exclusively against acts of state administration bodies, entities with public authorities, municipalities etc. Besides the administrative procedure, a victim of discrimination in accordance with the Law on Child Protection may seek protection of that right in separate proceedings before a competent court, where it may request establishing of discrimination, prohibition or removal of the discriminatory actions and compensation for damages.<sup>38</sup> Important provision which allows protection from discrimination and victim's support in the procedures before competent courts is the

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<sup>34</sup> Amendments and supplements of the Law on Child Protection, Article 3-a.

<sup>35</sup> Ibid., Article 9-a.

<sup>36</sup> Law Child on Protection, Official Gazette of the R. of Macedonia no. 170/2010, Article 9

<sup>37</sup> Ibid., Article 9 (7).

<sup>38</sup> Law on Child Protection, Official Gazette of the R. of Macedonia no. 170/2010, Article 9(e).

possibility that associations, institutions, and other organization established in accordance with the law, which have legitimate interest to protect collective interest of certain groups, or in their activities deal with protection of the right to equal treatment, are allowed to file a law suit in a procedure before a competent court and to act as co-litigator against the person who violated the right to equal treatment.<sup>39</sup>

Although the general prohibition against discrimination enumerates more discriminatory grounds, in the definition of discrimination in Article 9b and indirect discrimination in point (2) of the same article, only racial, ethnic and other belongings are enumerated. This can be limiting the applicability of provisions. In accordance with the misdemeanor provisions, a fine between 500 - 1000 euro, in denar equivalent value, will be imposed for misdemeanor on a person who acts discriminatory and abuses in the fulfillment of the rights and protection of a child, stipulated by this law.<sup>40</sup>

## **1.2. Institutional framework for enforcement of protection against discrimination in Macedonia**

### **1.2.1. Commission for Protection against Discrimination**

The main body for protection against discrimination is the Commission for Protection against Discrimination, established with section IV of the Law on Prevention and Protection against Discrimination. Envisaged as an autonomous and independent legal entity the CAD is competent to act upon complaints against all physical and legal persons. Founded in Skopje but mandated to receive petitions from the whole territory of the country, the CAD is the first body established to act exclusively upon issues of discrimination. Receiving 60 individual petitions in its first year of existence, the CAD excelled critics expectations and outnumbered the petitions received by the Ombudsman on the grounds of “non-discrimination and equitable representation”. Besides some initial difficulties, the day-to-day work of the Commission was hindered by a number of legal and institutional obstacles which will be discussed in details later in section 2.2.2.

### **1.2.2. The Ombudsman**

The Ombudsman Office as an institution was established before establishing the Commission against Discrimination, and as such is better known to the public, with better local accessibility by operating through six regional offices, specialized sector on non-discrimination and equitable representation, but with

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<sup>39</sup> Ibid., Article 9-k (1).

<sup>40</sup> Ibid., Article 129, (1).



narrower mandate to act only when rights are violated by state administration bodies and by other bodies and organizations that have public authority.<sup>41</sup>

The Ombudsman has no jurisdiction to act in cases where the alleged discriminator is a private entity. In such cases the person can submit a petition to the CAD or the Legal Representative. However, there are few instances where the Ombudsman on its free will has sent recommendations to physical persons for prohibiting admission to a place based on ethnicity and its recommendation was enforced.

The Annual Report of the Ombudsman for 2011 shows an increasing tendency of the overall number of petitions as well as an increase of petitions on the grounds of discrimination. In 2010 on the basis of non-discrimination and equitable representation there were a total of 16 petitions while in 2011 there were 42 petitions received.

It should be mentioned that Ombudsman has six regional offices based in: Tetovo, Kumanovo, Kicevo, Bitola, Shtip and Strumica. According to some of the representatives of the regional offices, with their establishment the institution of the Ombudsman came closer to the public. With the activities undertaken, and many campaigns organized by this institution, as well as participation in debates, there is increase in the public trust and as a result - increased number of petitions.

However, one weakness is the process of recording of the cases. The statistical information is not fully accurate since the grounds and areas for classification are mixed up and often cases on discrimination arising from the labor relations area are counted as labor relation cases and not as discrimination. It also should be stressed that 50% of all the petitions received by the CAD come from the work related sphere and even the annual Ombudsman report from 2011 concludes that there is an urgent need for passing a law on protection against mobbing.<sup>42</sup>

### **1.2.3. Advocate for equal opportunities**

The Law on Equal Opportunities for Women and Men in Article 20 stipulates that when the principle of equal treatment has been violated, the victims have the possibility to file a petition before the CAD, the Ombudsman, the Courts and the Legal Representatives established with the law. The law stipulates that the Legal Representative is employed at the Ministry of Labor and Social Policy and is a body to which a person can send a petition when his/her right to equal treatment is violated on the grounds of gender. In other words this is an additional opportunity for persons who have been discriminated against on the

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<sup>41</sup> Law on Ombudsman, Official Gazette of RM 60/2003.

<sup>42</sup> Annual Report of the Ombudsman, 2011, p.34.

grounds of gender. In 2010 and 2011 there were only 3 petitions received. One of the petitions was not considered for a review as the ground of discrimination was not gender; in other two petitions the Representative did not find any discrimination.

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All the above described mechanisms for protection are free of charge.<sup>43</sup> The Ombudsman is mandated to act when the alleged discriminator is a state body or a body with a public authority; the Legal Representative when the alleged discriminatory ground is on the basis of gender regardless whether the alleged discriminator is a state, private or natural body; and the CAD is mandated to act regardless of the ground of discrimination and the status of the alleged discriminator. However, all these bodies are empowered to deliver only opinion and recommendations. The only institution which can deliver legally binding decision is the Court.

#### **1.2.4. Courts**

While writing this report there has been no final legally binding Court decision filed upon the LPPD. Over 2/3 of the persons interviewed stated that the Court procedure is costly and lengthy and as such it discourages people to start proceedings. An additional factor is that some marginalized communities believe that most cases filed by marginalized communities are sent to one particular judge in the regional Court who almost always tends to rule against them. It should be mentioned that there was one case filed in the regional Court of Bitola on the grounds of LPPD, but it was rejected on the grounds that it had been filed before the coming into force of the law. Further, there are some claims coming from non-governmental organizations for having few cases against discrimination in the Court procedures but at this point nothing can be done but wait for their resolution.

In the interviews conducted with eight Presidents of Regional Courts none reported that s/he was personally trained for proper implementation of the Law against Discrimination. The Academy for training of judges and prosecutors has not held training on the LPPD. Recognizing the need for greater cooperation between the CAD and the Courts, on 27<sup>th</sup> of June the CAD and Academy signed a Memorandum for Cooperation aiming to enhance the cooperation of the CAD with the judicial branch.

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<sup>43</sup> Law on Equal Opportunities between Women and Men, Art. 22 (^).

### **1.3. The policy for prevention and protection from discrimination**

#### **1.3.1. State actors**

##### ***1.3.1.1. Ministry of Labor and Social Policy and the Government***

The Ministry of Labor and Social Policy is the key player in the legislation field of anti-discrimination and equal opportunities. The initial step towards creation of governmental entities mandated for issues of equality was made in 1997 when the Unit for Promotion of Gender Equality at the Ministry of Labor and Social Policy was founded. Ten years later in 2007 this unit was changed in department for Equal Opportunities which consist of Unit for Gender Equality and Unit for Prevention and Protection against any kind of discrimination.<sup>44</sup> Within the ministry, the first National Action Plan on Gender Equality was adopted in 1999, and was followed by the second 2007-2012 National Action Plan on Gender Equality.

The ministry has taken an active role in gender sensitization on local capacities, so far in cooperation with the British council during 2011 there were 20 trainings held which trained over 300 persons from 30 municipalities in the country.

The machinery is composed of the following institutions and mechanisms:

- Department on Equal Opportunities (DEO) within the Ministry of Labour and Social Policy established in March 2007 and comprised of a unit for gender equality and a unit for prevention and protection of any kind of discrimination.
- Gender focal points (GFP) who were appointed in line ministries known as Coordinators for Equal Opportunities. Their appointing and obligations is regulated with the Law on Equal Opportunities in the Article 13, Paragraph 3 - 5.
- Parliamentary Commission on Equal Opportunities, established under the Law on Equal Opportunities within the Macedonian Parliament and functioning since September 2006, monitors from gender perspective legal proposals developed by the Government.
- The Commissions on Equal Opportunities of Women and Men (EOC) and Coordinators on Equal Opportunities of Women and Men, which were established in 75 local government units under the Law on Equal Opportunities Commissions members comprise elected municipal councillors from different political parties with a four year mandate. The commissions develop and adopt local action plans on gender equality.

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<sup>44</sup> [http://www.mtsp.gov.mk/WBStorage/Files/Sektor\\_z\\_Ednakvi\\_moznosti\\_ENG\[1\].pdf](http://www.mtsp.gov.mk/WBStorage/Files/Sektor_z_Ednakvi_moznosti_ENG[1].pdf) p.3, (last viewed June 13th,2012)

### **1.3.1.2. Equal opportunities machinery at central level government**

With the Law on Equal Opportunities between Women and Men every ministry should appoint a coordinator for equal opportunities. Although, on the webpages of the majority of the ministries this information is not made public nor their annual reports published, after sending request for public information, both the Ministry of Justice and the Ministry of the Interior provided information on their activities. It is essential to note that both ministries acknowledged the good cooperation with the Ministry of Labor and Social Policy.

### **1.3.1.3. Parliament**

There are two parliamentary working bodies with mandate related to human rights issues: The Commission for Equal Opportunities between Women and Men and the The Standing Inquiry Committee for Protection of Civil Rights and Freedoms. In their current compositions, the Commission for Equal Opportunities between Women and Men has taken an active role in the field of anti-discrimination while the Standing Inquiry Committee for Protection of Civil Rights and Freedoms has been rather passive.

So far, the Standing Inquiry Committee for Protection of Civil Rights and Freedoms had three meetings. The first one was held on 13.10.2011 and the discussion led to an agreement for the operation of the Committee. The second meeting was held on 18.10.2011 and the topic of the discussion was the Progress Report for Macedonia as of 2011. Furthermore the last two meetings were held on 17.04.2012 and the discussions were over the Annual Report of Ombudsman and the Directorate for personal data protection for 2011. The continuation of the session was scheduled for 25.04.2012 however as of 9/06 there was no further information provided.<sup>45</sup>

On the other hand, the Commission for Equal Opportunities for Women and Men has had 13 completed and 1 scheduled meeting. According to their agenda, a greater scope of issues were discussed, and on the 7<sup>th</sup> meeting, held on 29.12.2011, Memorandum for Cooperation with institutions and organizations for protection from discrimination was signed.

The Commission for Equal Opportunities between Women and Men has shown more interest in the issues on anti-discrimination, they are open for cooperation with both governmental and non-governmental organizations as well as independent bodies. On the other hand, in its current composition the Standing Inquiry Committee for Protection of Civil Rights and Freedoms, has shown no

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<sup>45</sup> <http://www.sobranie.mk/ext/workingbodysessions.aspx?Id=47F95433-B52C-465A-AA84-43187C262B4C>, (Last viewed, 13.6.2012).

interest to cooperate on the development on this project has not replied no our written email nor phone calls. From the information given to our research team some other non-governmental organizations as well as governmental bodies have experienced the same problems.

#### **1.3.1.4. Equal opportunities machinery at local level of government with anti-discrimination mandate**

With the process of decentralization of the country the role of the municipalities was drastically changed. With regards to the issue of anti-discrimination and the role of the local municipalities it is important to underline the existence of the municipal commission for interethnic relations {hereinafter: CIR} established with the Law on Local Self-governance<sup>46</sup> in the municipalities where 20% of the population belongs to a non-majority community; and the municipal Commissions for Equal Opportunities between Women and Men {hereinafter CEOWM}, established with the Law on equal opportunities between women and men. In that sense it is important to note that both commissions are generally inactive, the CIR acts when there is a perceived problem and the CEOWM when there is push from the Ministry of Labor and Social Policy. From the interviews conducted with representatives of these commissions from eight regions of the country it follows that there is a great divergence in their composition, their knowledge on anti-discrimination varies but it is predominantly unsatisfactory, and the activities implemented at local level are quite weak.

In general, most of these local commissions are composed of members of the Municipal Council, exceptions being some Commissions which have external members, but all of them are representatives of political parties. The educational background of commission members varies, but the majority are neither gender sensitive nor anti-discrimination aware, all of them have other jobs/sources of income and most of them do not receive additional remuneration for their membership in the commission, besides the one for their membership in the municipal council.

The two most serious problems for operation of these commissions are the lack of gender sensitivity and the insufficient financial motivation. Most members do not have appropriate knowledge on the issue. Acknowledging this problem, the Ministry of Labor and Social Policy engages in training for these coordinators/ members of the municipal commissions. However, due to financial restrains, not all of the coordinators have received appropriate training. Bearing in mind that the following year is an election year, there is slight willingness in the ministry for spending money and resources in building capacities on a local level. As a result, many commission's members are still not gender sensitive and they understand

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<sup>46</sup> Law on Local Self-Governance, Official Gazette of RM, 5/2002

the equal opportunities issues as a mere formal representation of the women in municipal bodies.

### **1.3.2. Non-state actors**

Even though the first efforts towards drafting a comprehensive national anti-discrimination legislation appeared back in 2004, as part of sporadic and isolated initiatives of the fragmented non-governmental sector representatives at the time, they did not succeed in attracting the government attention and in providing a consistent incentive for national policy-makers and legislators to regulate this delicate and sensitive matter. The issue of anti-discrimination was placed on the national legislative and policy agendas following the critical conclusions of the 2008 EC report on the progress of the Republic of Macedonia in preparing for EU membership. The report stated that “in the area of **anti-discrimination policies**, neither a framework law on anti-discrimination has yet been enacted nor has this issue been clearly regulated in the existing legal provisions and mechanisms to identify, pursue and criminalise all forms of discrimination by state and non-state bodies against individuals or groups have not yet been established”. This critique served as a booster of both state and non-state actors to initiate steps towards drafting of a separate legislation in that area and to further consolidate the national sectoral policies in their non-discrimination aspects.

#### **1.3.2.1. Trade unions**

The Federation of Trade Unions {hereinafter: FTU} does not undertake actions on the basis of LPPD but focuses on the prevention and assistance of workers who are victims of mobbing. The regional representatives of the FTU have very limited knowledge on the anti-discrimination law and the procedure available before the CAD but on the other hand they are knowledgeable on the issues of mobbing, and the procedure available before the Courts. As often the victims of mobbing are also victims of discrimination, it is important to acknowledge the seriousness of this problem. FTU has been actively involved in activities for promotion of the issue of mobbing and have been very vocal in the need for adoption of a separate Law against mobbing. Their efforts in 2009 to create a separate Law on Mobbing were not fruitful as the new comprehensive law was not adopted but only the Law on Labor Relations was amended and incorporated several provisions on mobbing.

Following those activities FTU has been active in promoting the concept of mobbing which was unfamiliar to many workers. In order to achieve better results the FTU has developed a brochure and a booklet which explains what is mobbing, how to recognize and deal with it, as well as how to initiate a procedure. In 2011/12 FTU' team has conducted a research on mobbing and its results have shown that

there is an eminent need to adopt a separate Law on mobbing. This year - 2012 - is FTU's year against mobbing, and, since 1<sup>st</sup> of May there was a training of 20-25 representatives from each branch union. In June the draft Law on Mobbing was adopted by the highest decision-making body at FTU and they are planning to initiate the process for adoption of this separate law. The mere fact that half of the complaints received in the first year of existence of the CAD are of work-related problems shows that there is much to be done in this sphere.

#### **1.3.2.2. Employers' associations**

Employers' interest towards the issues on anti-discrimination, mobbing, the principle of equal pay for equal work is almost nonexistent. During the research period our team has been rejected by the a number of Human Resources managers who did not want to share their professional experience in the field even though they were acquainted with the fact that there will be no official mentioning of their names or companies. The Organization of Employers of Macedonia {hereinafter: OEM} has not organized any specific training or seminar for the issue on anti-discrimination or mobbing. The OEM claims that their representatives/members attend the seminars organized by the civil society sector and the Trade Unions and their members mainly respect the principle of nondiscrimination. However, as there is a lack of interest towards the issue from the employers themselves, it is essential to mention that their ethical codes are not available publicly on the company websites. Nevertheless, it should be mentioned that some ethical codes, in particular those of larger companies make reference to equality. As for an example, the Ethical Code of 'Alkaloid' (pharmaceutical company), incorporates the principle of "equal opportunity and equal treatment of all", contains provisions which prohibit mobbing and encourage diversity.<sup>47</sup> Bearing in mind that most of the discriminatory practices, pointed out in the field research were from the labor relations and the low awareness that exist among the employers for the issues of anti-discrimination, there is eminent need to engage in awareness raising activities which will directly target employers.

#### **1.3.2.3. Coalition of NGOs against discrimination**

In the process of the initial drafting of the LPPD, led by the idea to free the country from discrimination and to protect its citizens from any discriminatory actions initiated towards them, Macedonian civil society found itself in a momentum which led to its high mobilization and consolidation of resources. During this historical period, in June 2009, the Coalition Macedonia without Discrimination was established {also known as Coalition for equal opportunities in Macedonia,

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<sup>47</sup> Code on Ethical and Business Behavior [http://www.alkaloid.com.mk/content/Pdf/Kod\\_na\\_eticko\\_i\\_biznis\\_odnesuvanje.pdf](http://www.alkaloid.com.mk/content/Pdf/Kod_na_eticko_i_biznis_odnesuvanje.pdf) pg.20-24. (Last viewed on June 21, 2012).

hereinafter: MWD} composed of 12 non-governmental organizations. The coalition's goal was: to contribute in building the Macedonian society as a just society without discrimination, where all people enjoy their right on equal treatment and benefit from diversity".<sup>48</sup> After the adoption of the law, although officially this coalition is not dissolved, it stopped functioning and most of the organizations continued to pursue their independent agendas.

After the adoption of the LPPD, most non-governmental representatives, even though satisfied with the results of their initial proactive joint advocacy actions, were also affected by coalition fatigue followed by disappointment that they did not get the law they wished for. Notwithstanding the adoption of the law, many non-governmental organizations continued their hard advocacy and expert work on the issue. Some provided capacity building for the newly appointed Commissioners at the CAD, others engaged in promotional activities, third started to investigate the efficiency of the mechanism established, fourth worked to promote multiculturalism and tolerance.

## **2. Enforcement of the Law on Prevention and Protection against Discrimination**

### **2.1. Challenges following from the legal framework**

Adopted in 2010 after a long debate among governmental officials and non-governmental representatives in an open consultative process, but 'massacred' in the legislative procedure where the draft was substantially changed, the Law on Prevention and Protection against Discrimination is the first effort of Macedonia to systematically deal with the widespread problems of discrimination. The relatively concise law, structured in eight chapters and forty six articles, left many legislative and institutional unsolved questions, provided room for speculations, placed extreme burden on the Commission which it founded, and did not provide the victims with adequate legal and social protection. Before examining the law contents more profoundly, it is important to note that though it possesses weaknesses and flaws, it is a step forward since it established a tent for legal protection against discrimination for the first time. However, further legislative efforts are needed to align fully the existent law with the EC acquis, secondary legislation and policies in that area.

#### **Omissions from the law**

In almost all conducted interviews, even those with basic knowledge of the law, the initial and main criticism towards it, is for the absence of 'sexual orientation' in the final text of the law as a ground of discrimination. Being directly protected in Article 5(2) of the Law on Patients<sup>49</sup> and indirectly referred

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<sup>48</sup> <http://www.equal.org.mk/UK/Welcome.html>. (Last viewed June 6th, 2012).

<sup>49</sup> Official Gazette no 82/08 from 08.07.2008.



to, in Article 6 of the Law on Labor Relations<sup>50</sup> the LPPD omits this ground. Article 3 of the Law against Discrimination does not include the ground of sexual orientation, however, it leaves the basis for discrimination with an open ended list and affords protection to: “any other grounds established by the law or by ratified international agreements”. Striking fact is that the sexual orientation was deleted from the draft text somewhere on the legislative way between the Government and the Parliament. According to Koco Andonovski<sup>51</sup>, a project coordinator at the Helsinki Committee for Human Rights the mere fact that the sexual orientation was deleted demonstrates the conformist views of the government and represents clear discrimination against the LGBT group. Although de jure protection in the law is absent, this group is de facto protected in the recommendations issued by the Commission against Discrimination<sup>52</sup> as well as the publicly expressed views of the President of the Commission Mr. Dushko Minovski, who has been very vocal that this group even not directly enumerated in the law enjoys legal protection and all the petitions received on the basis of this ground will be accepted and the Commission will deliver upon them.

Additional obstacle is the lack of regulations among the CAD and the other bodies with anti-discrimination mandate. In this sense the law does not regulate the relations between the CAD and the Legal Representative from the Ministry of Labor and Social Policy who is mandated to receive petitions when the right to equal treatment is violated on the grounds of gender. Further, in Article 33, the law provides room for cooperation with the Ombudsman “in certain cases of discrimination” without further elaborating on the nature of cooperation between these two independent bodies. In that light, if the alleged discriminator is a state body or a body with public authority, the alleged victim has the legal right to initiate procedure before the CAD, as well as the Ombudsman. The law does not specify what happens if an applicant starts a procedure before the two bodies at the same time; or after the delivery of one of the bodies’ opinion, the applicant initiates a procedure before the other body; or if the two bodies come to different conclusions/ recommendations. Furthermore, there is no provision which prohibits initiating a procedure before one of the bodies if a procedure has already been initiated before the other body. The absence of such provision allows an alleged victim to initiate procedure before one of the two institutions and if not satisfied to initiate a procedure before the other institution, that would mean duplication of human resources, time and efforts. There was a case received in the regional Office of the Ombudsman in Shtip where a person dissatisfied with CAD’s opinion started a procedure before the Ombudsman. However, as the applicant decided to start a procedure before the

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<sup>50</sup> Official Gazette no 158 from 09.12.2010 by using the words “polova nasocenost”, [http://www.mtsp.gov.mk/WBStorage/Files/PT\\_Zakon\\_za\\_Rabotnite\\_odnosi\\_158\\_09122010.pdf](http://www.mtsp.gov.mk/WBStorage/Files/PT_Zakon_za_Rabotnite_odnosi_158_09122010.pdf). (Last viewed on June 12th, 2012).

<sup>51</sup> Interview conducted on June 8th, 2012.

<sup>52</sup> Case before CAD – Pedagogy book.

Court, in accordance with Article 23 of the Law on Ombudsman, the procedure before the Ombudsman was stopped.

From the information given by both the Ombudsman and the CAD, it seems that so far there has not been abuse of this dual possibility. However, in order to decrease the possibility for reaching different outcomes, with assistance of the OSCE Mission in Skopje both the Ombudsman and the CAD will be attending material trainings for discrimination.

With regards to its relations with the Court, the LPPD in Article 26 states that the CAD shall not act if the matter is initiated or effectively finalized before the Court. However, it does not stipulate what would happen if a person, regardless of whether satisfied or dissatisfied with CAD's recommendation, initiates Court proceedings. It is unclear whether the Court will investigate the issues of discrimination independently or will automatically accept the recommendation given by CAD.

It is important to note that the Commission is enabled to join Court's proceedings but for doing so has to bear the financial burden for such actions. So far, the lack of financial resources is one of the main problems that the Commission has faced and hence this is a potential obstacle for the work of CAD.

### **Vagueness of the law**

The Commission determines the manner in which the infringement of the right should be eliminated, however, Article 29 is quite vague by saying that "if the person to whom recommendation is given, does not act upon the recommendation or does not eliminate the infringement of the right, the Commission may start an initiative for starting a procedure before a competent body for determining its responsibility". This article does not state which is that competent body and hence provides room for wide ranging speculation and interpretations. The CAD has not taken advantage of the vagueness of the Law and so far there are no procedures before the Court for determining responsibility. On the other hand in its annual report the Commission states that 80% of the Commission decisions are respected. This has been debated in the non-governmental sector where it is claimed that not all the recommendations which the Commission claims are respected. In that sense, there are claims that the pedagogy book which was changed with Commission's recommendation is still in place. If one assumes, that these claims are valid, then the question remains unclear which is the competent body before which a procedure for determining responsibility should be taken.

## **2.2. Institutional challenges**

### **2.2.1. Procedure before Commission for Protection against Discrimination**

#### ***Burden of Proof***

One of the main problems related to the procedure available before the Commission which was outlined by almost all representatives of FTU, and the majority non-governmental organization is the burden of proof. Article 38 requires the applicant to submit “facts and evidence justifying his/her claim. Providing that there has been no discrimination is on the burden of the opposing party”. In the discrimination cases the applicant alleging discrimination is usually the weak party, often coming from marginalized, vulnerable groups that do not possess the knowledge or capacity to collect evidence. The victims are usually socially and economically positioned below the discriminators, and as such they do not have the resources to collect the evidence. The European Directives require the alleged victims to present only facts, and if there is discrimination *prima facie* the alleged discriminator has the burden of proof. The prerequisite for victims to present evidence places them in a difficult position. Even if one assumes that the victim manages to collect all the evidence, there is no incentive for the victim to initiate a procedure before the Commission which can only issue an opinion/recommendation when instead s/he can start a court proceeding which will provide more comprehensive protection.

#### ***Adequate Protection of victims***

Besides the problem of burden of proof, a serious disadvantage comes from the fact that in accordance with Article 28 from the LPPD the Commission issues only opinions and recommendations. In contrast, to some other Commissions against discrimination, such as the Bulgarian one, the Commission established in Macedonia has limited power and as a result it is not able to provide adequate protection for the victims. It is impossible to receive full and adequate protection without initiating court proceedings. The misdemeanor provisions in the law envisage only fines without any other type of compensation for damages. Hence, the law has the potential to penalize the discriminators, however does not grant the victims sufficient protection.

### **2.2.2. Capacities of the Commission for Protection against Discrimination**

#### ***Composition***

One of the main criticisms against the Commission is the manner of its composition. Article 18 enumerates the conditions for becoming a member of the Commission, and requires the applicant to be a citizen of the Republic of Macedonia and has his/her permanent residence at the country, to have higher

education and experience in human rights or social sciences. The selection procedure for appointment of the members was in accordance with the law, but still there is criticism that the requirements for becoming a member of the Commission need to be stricter. For instance, Article 8 of the Law on the Ombudsman stipulates: “The Ombudsman function is not compatible with performing another public function and profession or with political party membership”. There is no such provision in the Law against Discrimination. That’s why in order to increase the public trust it is important to change the membership conditions in the Commission and to impose a prohibition for parallel employment in other state institutions. This research comes to the conclusion that most people, believe that the person who works in the process lawmaking or supervises its execution shall not be the same one who enforces the law.

### ***Professionalization and Secretariat***

CAD in its current structure is not professionalized, in the sense that the Commissioners are not people employed in the CAD but they have other occupations and they have weekly meetings at CAD. In order to create a Commission which will be able to fulfill its tasks it is important to have a full time in-house Commissioners whose only job is to be a Commissioner. It is unrealistic to expect from the Commission that is economically weak and whose Commissioners are required to gather once a week to be an effective body.

Article 30 of the LPPD stipulates that: “the expert-administrative and technical matters of the Commission are executed by the Commission” which is a burden for the Commissioners who are appointed for the position which is not their primary occupation. As such there was a need for technical secretariat at the CAD and currently there are two people who are assisting the work of the CAD. One of them is a person employed at the Ministry of Labor and Social Policy while the other one is a volunteer. In that line it is important to provide technical assistance for the Commission because up to now the day-to-day operation depends only on the person employed in MLSP and a volunteer. Commissions against Discrimination cannot be an effective mechanism for protection without professional Commissioners and the relevant technical support.

### ***Organization***

The Commission is established in Skopje, there are no regional offices, the local capacities are not being used to promote the role of CAD and the Commission does not have sufficient resources to do so. It is important to promote the role of the Commission at local level, establishing a Commission of which the local people are not aware is not an effective mechanism for protection of their rights. In that sense it might be useful to follow the example of the Ombudsman when in 2004, 6 regional offices were established. Here, it is extremely important to note that there is no need to duplicate

resources. For this purpose the Regional offices of the Ombudsman or the Municipal commissions could be used as every municipal coordinator for equal opportunities should be knowledgeable of the procedure and engage in promotion of this mechanism for protection.

### ***Financial Obstacles***

In the first year of its existence the financial barriers that the Commission faced were the most serious obstacles for the implementation of all Commission activities. Highly limited, CAD's budget was one of the main reasons behind the lack of promotional activities and independent research carried by the Commission. Providing equipment for the proper functioning of the CAD was highly dependent on the non-governmental sector.

Even though the Commission members are very open to any type of questions, it is easy to reach them by phone in the Commission, or via email and they participate in almost all human rights events, they lack money for active campaigns to promote their role. But as a result a mere brochure is not sufficient, if it is not given in the hands of those who are in need of that information.

The research conducted showed that the lack of knowledge of the existing law against discrimination and the activities of Commission are alarmingly high.

### **2.2.3. Capacity of the equal opportunities machinery at local level**

#### ***Understanding discrimination and knowledge on anti-discrimination protection mechanisms***

The knowledge of what discrimination constitutes among the municipal coordinators of the Commissions for Equal Opportunities and the Commissions for Interethnic Relations significantly varies. Although all Commission representatives were familiar with the term, many of them were not gender sensitive.

Importantly, there was quite alarming high number of members of the local commissions which were not familiar with the existence of neither the Law against Discrimination nor the procedure available before the Commission against Discrimination. Many of the CEOWM and CIR members were for the first time acquainted with the LPPD and the CAD during the discussion with CRPM's field researcher.

Although not familiar with the law, all of them thought that they know what discrimination is, but when asked whether they have been victims of discrimination, many of them gave examples which could not be classified as cases of discrimination. This illustrates that even the people whose work relates to the issue are confused about this delicate question. Typical is the confusion of workers' rights with discrimination and there is wide spread belief that every

injustice and violation of labor rights is an issue of discrimination. Often given examples suggested by the interviewed people were: long working hours, underpaid labor, and humiliation at the work place. A significant number of people employed in the local administration are not familiar with the possible procedure before the CAD. Bearing in mind that the local municipalities are the first authority which people face, it is important for every municipality to have an employee who is aware of anti-discrimination issues and also who is able to provide useful information and assistance.

An interesting conclusion to which this research comes is the weak understanding of affirmative measures and the high dissatisfaction which prevails about them. A great number of people understand discrimination as giving a privilege to one group over another one. It is obviously necessary to transfer to the local level, through various communication channels and other information measures, the concept of anti-discrimination and the meaning of affirmative measures.

### ***Activities at the local level***

The activities of the local commissions vary in accordance with the problems identified by the local commissions. It should be stressed that there are commissions which are not active at all, and have not implemented any activities; others have implemented some of their planned activities but none of the Commissions which have been visited during this research have implemented all planned activities.

The action plans developed by the commissions contain a number of actions; ranging from educational activities in schools, gynecologist examinations, up to organizing concerts, promoting sport activities and nature preservation. It should be pointed that although the LPPD does not impose additional obligations towards the municipal Commissions for equal opportunities between women and men nor the Commissions for interethnic relations, there is a tendency in some municipalities to alter their functions from a Commission for Equal Opportunities between Women and Men to a Commission for Equal Opportunities in general. Such an example is the Commission for Equal Opportunities in Bitola, which has taken a proactive role in the discrimination area.

The local Commissions for Interethnic Relations function only when there is a perceived need to act. For instance, the Commission for Interethnic Relations in Rostusha has acted only a couple of times when there was a need to do so. One of those examples was when ethnic tensions appeared in the local school. In order to overcome the problems, the Commission in cooperation with the parents and the Ministry of the Interior combined their efforts and acted together. However, the members of the CIR believe that if the frequency of its meetings increases and more money is allocated for its operations this will definitely result in raising its capacities, involving itself in immediate actions, and improving its awareness building role in the local context.

### ***Communication with other institutions***

The municipal coordinators of CEOWM are obliged to report to the Ministry of Labor and Social Policy. According to Elena Grozdanova from the Ministry of Labor and Social Policy every municipality respects the obligation and sends annual report to the Ministry. The coordinators of the local Commissions acknowledge that the operation of these commissions is difficult and they face problems in implementing their activities, however they respect their obligation to report to the ministry. With regards to the vertical coordination with the MLSP, local municipalities have diverse practices, some state that their communication with the Ministry of Labor and Social Policy is quite weak, others say that there is communication when local units face problems, or only when they are invited by the ministry to fill in questionnaires or participate in trainings. These local commissions have nonexistent horizontal communication with other Commissions for Equal Opportunities between Women and Men.

### ***Knowledge on EU anti-discrimination legislation***

The knowledge of local commissioners on EU anti-discrimination legislation is extremely low and is mainly used in general terms for anything that operates better than it does in Macedonia, in relation to the research domain. Usually, without having knowledge about EU institutions, their role and the European legislation and policies, people tend to say: “everything is easier there”, “the story is different over there”, “we cannot be like them”. However, bearing in mind that people employed in the local administration as well as the population in general, have really little knowledge of the domestic legislation, the efforts should be primarily concentrated at promoting the concept of anti-discrimination policy, and the domestic legal and institutional protection mechanisms.

#### **2.2.4. Civil society organizations’ capacity in the anti-discrimination field**

After careful examination of the national legal framework against discrimination, the main bodies for protection against discrimination, and the sectorial case studies selected for the purposes of this shadow report, it is obvious to look closer at the role that the non-governmental sector, the trade unions and the employers play in the field of anti-discrimination. Following the results of interviews conducted with representatives from the groups of respondents mentioned above and the analysis of their activities it can be concluded that the non-governmental sector has taken proactive role in the field of anti-discrimination, the Federation of Trade Unions has been actively working towards developing a separate Law on Mobbing while the owners of private businesses have been generally disinterested and passive on the issues of anti-discrimination and equal treatment. This section will outline the main activities

undertaken by the above mentioned actors and hence will assist in completing the picture on anti-discrimination legislation and practices.

The independent CAD, left by the Government with a scarce budget and empty office space would not have become operational without the strong will of some of the Commissioners and the help from the non-governmental sector and international organizations. In this line, the role of the OSCE mission in Skopje and the Macedonian Center for International Cooperation {hereinafter: MCIC} played a decisive role for the kick off work of the Commission. With regards to this, MCIC equipped the rooms of CAD with corresponding office equipment and furniture. It also helped the design and launch of an official webpage of the Commission available at [www.kzd.mk](http://www.kzd.mk).

Further on, CAD signed a Memorandum for Cooperation with the OSCE Mission in Skopje and with the financial assistance of the OSCE three workshops and four trainings were held for the members of the CAD. The workshops were organized in the period October - December 2011, and aimed to increase the inter-institutional cooperation and partnership building. Bearing in mind that this newly established commission primarily had to introduce itself and to promote its functions amongst other relevant stakeholders, those initial workshops stressed on building the Commission capacities, on increasing and improving their inter-institutional cooperation with local municipalities and other local actors. The second workshop targeted the cooperation with central government, while the third one was concentrated on the effective interaction between the CAD, the social partners and the civil society. Additional funding for trainings of the individual Commissioners themselves on how to perform their duties was secured by the OSCE. The latter has also supported awareness building activities in relation to the commission's structure, responsibilities, legal procedures it can initiate, incling the development and circulation of an official promotional brochure in Macedonian and Albanian language. Furthermore, Polio Plus developed the brochure "I, the Commissioner" which contained information about the CAD, the Commissioners themselves and the protection mechanism.

Besides these activities directly targeted at CAD's promotion, there were also activities undertaken to evaluate the efficiency of the Commission's operations, one of those being FOSM's research where the work of the Commission was assessed in detail.<sup>53</sup> Another organization - STUDIORUM - currently works on a project researching the best model for national body for human rights and protection.<sup>54</sup>

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<sup>53</sup> FOSM, Shadow Report for Shadowed Commission, available online at <http://soros.org.mk/dokumenti/izvestaj-vo-senka-za-komisija-vo-senka-MKD.pdf>

<sup>54</sup> Studiorum, available online at <http://studiorum.org.mk/en/?cat=9>



Other organizations have been actively working on providing victim's support, such as the Helsinki Committee of Human Rights or "Bairska svetlina" from Bitola, which are widely recognizable among the people and there are even cases when the administration itself sends people to ask for advice from these organizations.

It is also interesting to state that there are a number of organizations which promote tolerance, cooperation and understanding among different ethnicities, ages, gender, and other grounds. One of these examples is "Multi-kulti" from Kumanovo that targets youngsters and brings them closer to the open values of society.

It is important to note that the above mentioned organizations are not the only organizations which work on issues related to discrimination in the country. There have been other previous and ongoing awareness, research, network and capacity building initiatives undertaken by various local actors. Although not all of them were mentioned explicitly it is important to note that there are many organizations who are further devoted to committing their knowledge, time and resources in putting the issue of anti-discrimination on the the institutions' and citizens' agendas and to initiate other actions towards building of a tolerant multiethnic society.

### **3. Case studies of enforcement of anti-discrimination legislation**

#### **3.1. Discrimination in the area of education**

##### **3.1.1. Anti-discrimination in related national sectoral legislation**

The main education laws regulating primary, secondary and tertiary education include provisions on prohibiting discrimination on the basis of different grounds. The **laws on primary<sup>55</sup> and secondary education<sup>56</sup>** specifically state that 'every child has the right to basic education' and 'everyone, under equal circumstances has the right to secondary education'. They continue stating that 'discrimination on the grounds of gender, race, skin colour, national, social, political, religious, wealth and social belonging is prohibited'.

The Law on Primary Education also includes provisions related to specific vulnerable groups of children, such as the provision that students with special education needs should be provided conditions for completing primary education in the regular and special schools, and have the right for individual assistance during the process of education.<sup>57</sup>

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<sup>55</sup> Law on Primary Education, Official Gazette of RM, 103/2008, Article 2.

<sup>56</sup> Law on Secondary Education, Official Gazette of RM, 2002 clarified text, Article 3.

<sup>57</sup> Law on Primary Education, Official Gazette of RM, 103/2008, Article 6.

In addition, possibilities for education in the mother tongue are provisioned for non-majority communities.<sup>58</sup> In practice however, only the Albanian, Turkish and Serbian community have the possibility for instruction in their mother tongue<sup>59</sup>, while children from the Roma, Vlach and Bosniak community (and other interested as well) are provided an alternative - to attend elective classes entitled 'Language and culture of the (Roma/Vlach/Bosniak) Community'. Since the academic 2010/11 an experimental program in Bosniak language has been implemented in three primary schools.<sup>60</sup>

The Law on Secondary Education also provides for special education of students with special educational needs in special VET schools.<sup>61</sup> Representatives of non-majority communities are also provided the opportunity to attend secondary school in their mother tongue, although in reality it is only offered in Albanian, Turkish and Serbian language.<sup>62</sup>

Fines for schools where discrimination has been reported are provisioned only in the Law on Primary Education, according to which the school can be fined between 2500 - 3000 EUR if assessed by the State Education Inspectorate (SEI) to discriminate on any of the above-mentioned grounds.<sup>63</sup>

While the **Law on Tertiary Education** does not include specific anti-discrimination provisions stating grounds for discrimination, it incorporates a provision that one of the roles of higher education institutions is 'providing an opportunity to everyone under equal circumstances to acquire a higher education and education throughout his/her life.'<sup>64</sup>

In the **Concept on Primary Education**<sup>65</sup>, the principle of non-discrimination is clearly stated in the statement that 'the school will take over all necessary measures in order to protect the student from all forms of discrimination during his stay in the school (...)'.<sup>66</sup>

Furthermore, the **Concept for Writing and Evaluating Textbooks**<sup>66</sup> includes several elements for evaluating textbooks which incorporate the concepts of 'respect of human rights' and 'non-discrimination'. It is specifically stated that 'textbooks should prevent discrimination, intolerance and negative display of the individual and social groups with regards to gender, age, sexual

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<sup>58</sup> Ibid., Article 7.

<sup>59</sup> <http://www.stat.gov.mk/pdf/2012/2.1.11.08.pdf>, p.3.

<sup>60</sup> <http://www.pravda.gov.mk/documents/izvestaj.pdf>.

<sup>61</sup> Law on Secondary Education, Official Gazette of RM, 2002, Article 50.

<sup>62</sup> <http://www.stat.gov.mk/pdf/2012/2.1.11.08.pdf>, p.5.

<sup>63</sup> Law on Primary Education, Official Gazette of RM, 103/2008, Article 172.

<sup>64</sup> Law on Tertiary Education, Official Gazette of RM, 35/2008, Article 3.

<sup>65</sup> Concept for Primary Education, BDE, 2009.

<sup>66</sup> <http://bro.gov.mk/docs/Biro%20za%20obrazovanje%20-%20konceptija%20za%20izrabotka%20na%20ucebnik%20mk%20-%20za%20na%20web.pdf>

orientation, racial, ethnic and religious belonging. It continues elaborating that the texts, visual examples, language used in textbooks contributes to improving student sensitivity to gender equality and human rights and freedoms in general. While the concept of respect of human rights is incorporated as a general principle, the instructions for biology textbooks, specifically state that the biological connectedness among all people should be explained, thus influencing the values related to non-discrimination and equality. Before adopting the Concept, there were numerous critiques that textbooks presented certain groups (e.g. Roma, women) in a stereotypical manner, which then poses concerns for discrimination. The principles of non-discrimination set out in both the Concept for Primary Education and the Concept for Textbooks are expected to reduce the possibilities for stereotyping and discrimination within the textbooks, also supported by the strong accountability of the Commission for evaluating textbooks, outlined in the latest amendments to the Law. Furthermore, the amended **Law on Textbooks** regulates that a textbook can be withdrawn from use if determined that in some of its parts it is offensive towards the culture, history and other values of citizens of the Republic Macedonia.<sup>67</sup>

In order for the State Education Inspectorate (SEI) to be able to assess the level of respecting the non-discrimination and equal treatment provisions, specific indicators have been developed, as part of the **Indicators for Assessing the Quality of Schools**.<sup>68</sup> For example, it assesses whether the school has procedures for working with students with physical handicaps, spatial conditions for accommodating these students, etc.; procedures for assisting students with low SES and the level these procedures are practiced. In addition, the SEI evaluates whether the school staff treats each student equally regardless of their biological, psychological and sociological characteristics, and whether students are being taught on how to 'recognize and deal with specific situations related to discrimination in a school context'. Schools use the same indicators for the school self-evaluations, which are being conducted every third year. Additionally, some schools may include the aspect of anti-discrimination in their Code of Conduct.<sup>69</sup>

In order to sensitise education stakeholders in recognizing and acting accordingly in cases of discrimination, the MoES, in cooperation with the National Roma centrum (NRC) have developed a **Manual on non-discrimination in education**<sup>70</sup> which includes: overview of the policy framework for non-discrimination in education; assessment of the current state on the basis of a conducted field research; indicators and descriptors of discrimination; roles and responsibilities of the stakeholders in

<sup>67</sup> Law on amending the Law on Textbooks for Primary and Secondary Education, Official Gazette of RM. No. 46, 5.04.2012

<sup>68</sup> Available at: [http://www.mon.gov.mk/DPI/download/Indikatori\\_mk.pdf](http://www.mon.gov.mk/DPI/download/Indikatori_mk.pdf)

<sup>69</sup> E.g. [http://gorginaumov.edu.mk/?page\\_id=19](http://gorginaumov.edu.mk/?page_id=19); [www.marijakirisklodovska.mt.net.mk/down/kodeks\\_uculiste.pdf](http://www.marijakirisklodovska.mt.net.mk/down/kodeks_uculiste.pdf)

<sup>70</sup> [http://static.nationalromacentrum.org/pdf/obrazovanie\(2\).pdf](http://static.nationalromacentrum.org/pdf/obrazovanie(2).pdf)

the education process and procedures for achieving and maintaining a culture of non-discrimination. While this manual, as a policy instrument, is a measure that can yield specific guidelines and motivate activities, several adjustments need to be made in order to enable stakeholders to precisely identify discriminatory actions from other actions which may represent a breach of a certain rights, but cannot be assessed as discriminatory. For example, 'exclusion from curricular or extracurricular activities', a situation when 'students are not praised or awarded for their achievements regardless of their abilities', which in its essence is not discriminatory unless a certain group of students (e.g. girls, Macedonians, etc.) is being praised while another (e.g. boys, Roma) - is not. Several cases such as this are described and as such they can cause confusion among education stakeholders on what actually constitutes a discriminatory action.

The aspect of anti-discrimination and respect of human rights is also included in the **syllabus for Civic Education**, which is a mandatory subject in primary school (grades 7 and 8). Specifically, it is expected from students to: 'know and understand basic human rights; be able to detect examples of disrespect of human rights in the school and community; to know how human rights can be protected'<sup>71</sup>, etc.

In the secondary schools, the aspect of human rights is not as specifically elaborated in the syllabi, though it is partially incorporated in the Sociology syllabus for general education schools, with the aim that students should: 'develop feelings of tolerance, peaceful coexistence and respect for all citizens regardless of the religious, national and social differences'.<sup>72</sup>

It can be concluded that on the level of formal policies, the issue of discrimination has been taken seriously and the concepts of non-discrimination and equality have been included in all major policy documents. However, apart from clearly stating the values of equality and equal treatment, the system needs to be strengthened by developing better transparency and accountability mechanisms. For example, financial fines are envisaged only for primary schools where discrimination has been detected, but not for secondary and tertiary education institutions. Moreover, it is questionable how much financial fines can be effective in this case, bearing in mind that discrimination can be indirect and often unintentionally performed. In this regard, recommendations provided by the SEI upon identifying discrimination in schools can be beneficial if they apply activities for awareness raising, improving understanding with regards to what constitutes discrimination (direct and indirect), rather than punishing without providing an alternative.

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<sup>71</sup> <http://bro.gov.mk/docs/osnovno-obrazovanie/VII%20oddelenie/Microsoft%20Word%20-%20gragansko%20obrazovanie.pdf>

<sup>72</sup> <http://bro.gov.mk/docs/gimnazisko/zadolzitelnipredmeti/Sociologija.pdf>

Another questionable aspect is the level of proficiency of certain stakeholders to correctly identify discrimination. For example, the SE Inspectors may not be able to detect discrimination in a certain school during their three-day integral evaluation visit, since it can often be indirect and not recognized as such in order to be reported by the students or the school staff. In addition, it is questionable how much the representatives of the Commission for evaluating and approving textbooks are qualified to spot discrimination and show sensitivity towards certain types of discrimination.

### **3.1.2. Anti-discrimination in practice**

As stated above, the State Education Inspectorate is responsible for evaluating the achievement of primary and secondary schools with regards to different indicators. One of the indicators refers to the aspect of equality and fairness, aiming to identify the level of respect of children's rights, assess whether all students are treated equally regardless of their background and characteristics. In their meta-report on the quality of the education process, the SEI concludes that 'in the majority of schools (...) there is no psychological and physical harassment of children or discrimination on any ground. (...) The vast majority of schools have equal and just treatment towards students from different gender, ethnic and social background.'<sup>73</sup> These findings are complemented with the data from the Manual on Non-discrimination in Education, where the qualitative research among school teaching and administrative staff confirmed that they do not perceive discrimination as very frequent. Teachers generally report the existence of discrimination on the grounds of social status, affecting mainly Roma students.<sup>74</sup>

While data from the SEI portrays school climate of respect of children's' rights and discrimination-free environment, a survey conducted by the Children's' Embassy 'Megjashi' indicates that almost 40% of primary and secondary school children have felt discriminated against, mostly with regards to their age, but also language, ethnic background, gender and religious beliefs.<sup>75</sup> Furthermore, 44% of the students which felt discriminated against on the grounds of their social background, reported that the discriminator was a teacher. Although students' understanding of what constitutes discrimination may be vague and incorrect, these are nevertheless indicative findings, which in combination with other available data speak of the powerful influence that teachers can have on the process of forming perceptions and

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<sup>73</sup> [http://dpi.mon.gov.mk/images/stories/MK\\_Broshura\\_Kvalitetot\\_na\\_vospitno-obrazovniot\\_proces.pdf](http://dpi.mon.gov.mk/images/stories/MK_Broshura_Kvalitetot_na_vospitno-obrazovniot_proces.pdf), (Last viewed on 26.08.2012).

<sup>74</sup> [http://static.nationalromacentrum.org/pdf/obrazovanie\(2\).pdf](http://static.nationalromacentrum.org/pdf/obrazovanie(2).pdf), (Last viewed on 26.08.2012).

<sup>75</sup> See: <http://www.childrensembassy.org.mk/WBStorage/Files/istrazuvanje%20za%20privata%20na%20decata%20vo%20skolite%202009.pdf>, (Last viewed on 26.08.2012).

attitudes towards other students. Specifically, an OSCE study<sup>76</sup> conducted among secondary school children shows that almost half of the respondents reported to have heard offensive comments from teachers about other ethnic communities. Moreover, about 40% of the students stated that what teachers said has influenced their perceptions of others. The same study showed that about one third of students felt that their ethnic group is not appropriately represented in textbooks. Although negative perceptions do not necessarily imply discriminatory behaviour, they can be a potential trigger of discriminatory actions.

Hence, it is of utmost importance for the schools to plan activities aimed at reducing prejudice and encouraging mutual activities between children from different social and ethnic backgrounds. The research conducted for the purpose of developing the Manual resulted in findings that schools very rarely plan such activities. While multi-ethnic schools are expected to be more sensitive to these issues they also rarely recognize the benefit of such activities. Specifically, as indicated in another study<sup>77</sup> which analysed the annual work programs of 6 multi-ethnic primary schools in 2011/12, while almost all schools formally recognize the need for increased interaction between representatives from different communities, not all of them support this claim with specific activities.

### ***3.1.2.1. Groups vulnerable to discrimination in education***

Available information indicates that the most vulnerable groups to discrimination in education are: children of Roma ethnic background, children with special education needs (in particular with physical and intellectual disabilities), girls from traditional Muslim communities (regardless of the ethnic background).

The **Roma** population is particularly vulnerable since they are frequently a victim of multiple discrimination (mainly on the ground of social status, but also ethnic background and religious beliefs). The unequal treatment begins with the enrolment in primary education, when many Roma students are diagnosed with having special educational needs and sent to special schools or classrooms for children with intellectual disabilities.<sup>78</sup> Approximately one third of all students in special schools are Roma<sup>79</sup>, which is an extremely disproportional number and in most cases - effect of social negligence and insufficient knowledge of the language, instead of actual intellectual disability.

<sup>76</sup> <http://www.osce.org/mk/skopje/41445?download=true>, (Last viewed on 26.08.2012).

<sup>77</sup> Baseline report: Strengthening multiethnic cooperation in municipalities, MCEC, 2011.

<sup>78</sup> [http://www.mtsp.gov.mk/WBStorage/Files/OSCE%20AP\\_Roma%20and%20Sinti%20\\_MK-FINAL.pdf](http://www.mtsp.gov.mk/WBStorage/Files/OSCE%20AP_Roma%20and%20Sinti%20_MK-FINAL.pdf), (Last viewed on 26.08.2012).

<sup>79</sup> [http://www.unicef.org/tfymacedonia/macedonian/RECI-Macedonia-English-WEB\(3\).pdf](http://www.unicef.org/tfymacedonia/macedonian/RECI-Macedonia-English-WEB(3).pdf), (Last viewed on 26.08.2012).

As a consequence, these children are being inhibited to achieve their true potential and may remain in the 'circle' of special education throughout their whole life.

Additionally, since the Roma typically live in segregated communities, the schools attended are also prone to segregation (see Case Study 1). While this may not be discriminatory by itself, problems can occur when quality teachers refuse to teach in these schools and lower achieving teachers are sent to schools with majority Roma students as a 'punishment'.<sup>80</sup> The lower motivation of teachers contributes to the lower 'head start' of the Roma students with regards to basic literacy skills and results in overall lower achievement of these students (or schools with majority Roma students), insufficient skills to follow the school material as they progress throughout the grades and eventually - higher dropout rates.<sup>81</sup>

### Case Study 1

#### *Segregation of Roma children in primary schools*

In Bitola, the 'Bair' settlement is populated with majority Roma population. Consequently, the majority of the students attending the primary school 'Georgi Sugare' are Roma (500 out of 600). The remaining children attend the school since it is in their neighbourhood. However, in 2009 a case of parents of non-Roma children signing them out of the school<sup>82</sup> raised the public interest and was assessed by the civil sector as an act of discrimination towards the Roma children. The Macedonian Helsinki Committee for Human Rights submitted a complaint regarding this case to the Anti-discrimination Commission, but the case hasn't been resolved yet. The complementary institution – State Education Inspectorate, in their integral evaluation of the school did not find discrimination. Moreover, the report states that 'the school is renowned for the equal treatment of all students regardless of social, gender, ethnic and intellectual differences', however, it continues concluding that 'the school does not organize curricular and extra-curricular activities for culturally-mixed groups.'<sup>83</sup>

The school, apart from acting educationally towards parents cannot do anything, from a legal aspect, to prevent the occurrence of the elaborated form of discrimination. Therefore, as a measure for preventing segregation,

<sup>80</sup> [http://www.soros.org/sites/default/files/macedonia2\\_20071217\\_0.pdf](http://www.soros.org/sites/default/files/macedonia2_20071217_0.pdf), (Last viewed on 03.09.2012).

<sup>81</sup> Ibid.

<sup>82</sup> <http://static.nationalromacentrum.org/pdf/NRC-EUMAP.Rountables.MK2.pdf>; Interview with Remzi Medik from NGO Bairska Svetlina

<sup>83</sup> [http://dpi.mon.gov.mk/images/stories/OU\\_GORGI.pdf](http://dpi.mon.gov.mk/images/stories/OU_GORGI.pdf), (Last viewed on 20.05.2012).

the Ministry of Education and Science approved an exception to the rule for enrolment of students in the primary school situated in the proximity of living, allowing parents of Roma children to enrol them in other schools in the municipality and providing free transport to the school. However, parents were not much willing to enrol their children in another school claiming that attending the specific school was a family tradition.<sup>84</sup>

Although this case has been reported as discriminatory, research conducted indicates that when it comes to discriminatory actions of teachers/school staff or peers towards Roma students, the schools with majority Roma children are the least vulnerable to discrimination while schools where Roma students are minority are more vulnerable.<sup>85</sup>

Situations similar to the one in Bitola have been noted in other municipalities as well (Kumanovo, Shtip). For example, the representative of the Ombudsman in Kumanovo stated they have received claims that Roma students have been prevented to enrol into certain school since the headmaster did not make the school known as 'gypsie school'. After the Ombudsman has reacted to the school, appropriate actions have been taken. Currently, the Ombudsman in Kumanovo holds regular meetings with the school staff, organizes trainings and conducts surveys in order to detect and prevent possible discrimination.<sup>86</sup>

**Children with special needs** are another category especially vulnerable to discrimination and exclusion from education. They traditionally attend special schools, which can be: for children with auditive disability, visual disability and intellectual disability. Policies for greater inclusion of these children in mainstream schools started to be implemented about 15 years ago, although their benefits are still lagging behind. The strategic determination of the Government is strongly in favour of inclusion<sup>87</sup>, however the current provision in the Law on Primary Education that these children can be enrolled in regular school provided there are possibilities for this, is rather vague and open to interpretations. Regular schools typically react with regards to the lack of resources to appropriately include children with special needs, which range from insufficient human resources (no special needs educators), inadequate training of the teachers for working with the children and insufficient material

<sup>84</sup> Interview with Redzep Ali Chupi, available at: <http://www.scribd.com/doc/68759217/%D0%9E%D1%85%D1%80%D0%B8%D0%B4%D1%81%D0%BA%D0%B8-%D1%80%D0%B0%D0%BC%D0%BA%D0%BE%D0%B2%D0%B5%D0%BD-%D0%B4%D0%BE%D0%B3%D0%BE%D0%B2%D0%BE%D1%80-%D0%98%D0%9D%D0%A2%D0%95%D0%A0%D0%92%D0%88%D0%A3%D0%90>

<sup>85</sup> [http://www.soros.org/sites/default/files/macedonia2\\_20071217\\_0.pdf](http://www.soros.org/sites/default/files/macedonia2_20071217_0.pdf), p.169.

<sup>86</sup> Interview with Naser Veselji, Representative of the Ombudsman office in Kumanovo.

<sup>87</sup> See: Ministry of Labour Strategy-equal opportunities, part on disability.



and spatial conditions (for children with additive or visual disability or physical disability<sup>88</sup> - see Case Study 2).

## Case Study 2

### *Student with physical disability prevented from attending regular school*

The Association of students and young people with disability–Skopje reports a case of one student with physical disability who was unable to attend regular secondary school because all secondary schools cannot be accessed by a person with physical handicap. Although the girl was perfectly capable to attend the classes, she faced many architectonic barriers. The classes were typically held in several classrooms, on different floors in the schools' building. Although the Association reacted with a suggestion to schools to adjust the teaching by holding all classes in one classroom, none of them agreed to this. In addition, the possibility for irregular ('vonredno') secondary education was not possible since the Law on Secondary Education provisions irregular education only for persons over 17 years.

The numerous setbacks faced forced the parents to take a bank loan in order to enrol the girl into a private secondary school, where the spatial conditions were not a problem for attending the classes. However, since this represented a significant burden to the family budget, after she turned 17, she was enrolled as an irregular student in a public secondary school.

However, another paradox occurred since as an irregular student she wasn't able to receive free textbooks.

Source: Interview with Daniela Stojanovska, Association of students and young people with disability –Skopje

In practice, the inclusion and treatment of these children depend on the attitude of the particular school. Since only rarely do schools employ special education teachers, they feel reluctant when it comes to enrolling a student with special needs, especially with intellectual disability. Hence, parents can be indirectly 'rejected' to enrol their child in a regular school under the explanation that the school doesn't have the capacities needed and cannot provide the adequate education. According to a survey, the schools that are more open to inclusion still consider that special needs children need additional assistance

<sup>88</sup> [http://jser.fzf.ukim.edu.mk/index.php?option=com\\_content&view=article&catid=48%3A200412&id=280%3Ainclusive-education-of-children-with-special-needs-in-republic-of-macedonia&Itemid=58](http://jser.fzf.ukim.edu.mk/index.php?option=com_content&view=article&catid=48%3A200412&id=280%3Ainclusive-education-of-children-with-special-needs-in-republic-of-macedonia&Itemid=58)

from a special teacher (confirmed by 75% of the surveyed teachers and 77% of parents). Teachers are more reluctant when it comes to the policy for inclusion of children with special needs, compared to parents. However, when it comes to acceptance of children with special needs by their classmates, the parents are more pessimistic, with only 26% believing that their child is accepted, contrasted to 61% of teachers sharing this opinion.<sup>89</sup>

Since the MoES was unable to provide the necessary budget for employing special education teachers in each school, an alternative model of a municipal special educators is being implemented in several municipalities. One primary school in the municipality Karposh is known for its inclusiveness with regards to accepting children with special needs. However, the children would not have been able to receive the needed assistance for learning without the financial support of parents (see Case Study 3).

### Case Study 3

#### *Inclusiveness made possible for extra money by parents*

The primary school “Dimo Hadzhi Dimov” in Skopje currently has 40 students with special education needs (SEN). Although the school is willing to enrol these children, teachers admit that they do not feel sufficiently skilled to provide the appropriate assistance, and would greatly benefit from the engagement of a special educator. Since the school wasn’t able to provide such a specialist, several parents of SEN children, at the level of Parents Council organized and engaged a special educator to work more closely with the children and with teachers. However, the financial burden for this falls completely on the parents. Hence, their decision to enrol their child in a regular school costs them more than if the child was enrolled in a special school.

The educator has been working with 12 children with different types of disability, usually before or after regular classes. In addition, she supports teachers in adjusting the school material to children with specific educational needs. She receives different feedback from the teachers; while some are open and willing to adjust their teaching, others are more rigid. The psychological and pedagogical service in the school have received training in working with SEN children, although it mainly refers to providing advice to teachers on a more general level.

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<sup>89</sup> Journal of Special Education and Rehabilitation, INCLUSIVE EDUCATION OF CHILDREN WITH SPECIAL NEEDS IN REPUBLIC OF MACEDONIA, Zora JACHOVA.  
[http://jsr.fzf.ukim.edu.mk/index.php?option=com\\_content&view=article&catid=48%3A200412&id=280%3Ainclusive-education-of-children-with-special-needs-in-republic-of-macedonia&Itemid=58](http://jsr.fzf.ukim.edu.mk/index.php?option=com_content&view=article&catid=48%3A200412&id=280%3Ainclusive-education-of-children-with-special-needs-in-republic-of-macedonia&Itemid=58)

Starting from the next school year, additional parents want to include their children in the group that receives support, however, the special educator claims that in case of more children, additional special educator would be needed in order to be able to accommodate all children and provide the necessary support.

Source: Rosica Koleva, President of the Association for Support of Persons with Down Syndrome 'Sinolicka'

### **3.1.2.2 Regional initiatives**

Only few municipalities have included activities related to tackling discrimination in education of specific groups. The Municipality of Bitola in the Strategy for Inclusion of Roma identifies measures for soliciting the inclusion of Roma children in the pre-school and primary education. However, determining that the municipality does not have sufficient funds for sustainability of the activities, it calls for increased initiatives on behalf of the civil sector and interested donors.<sup>90</sup>

The Municipality of Strumica, as a part of the activities envisaged with the Action plan on gender equality has implemented a project on strengthening the capacities of education institutions in the municipality for tackling gender stereotypes, in cooperation with the Equal Opportunities Committee.<sup>91</sup>

### **3.1.2.3 Social inclusion mechanisms**

As mentioned above, the Law on Primary Education enables children with special needs to be enrolled and attend mainstream schools, except for cases where the child's needs do not allow this.<sup>92</sup> In addition, parents with children with special needs are exempt from the obligation to enrol the child in the primary school in the area of living<sup>93</sup> thus enabling them to select the school which would be the most appropriate for the child. Similar to this, as an affirmative action, Roma children are allowed to enrol in a secondary school regardless of their GPA from primary school, which does not refer to children from other ethnicities.

Furthermore, while primary and secondary school students have the right to a free transportation to school if living at least two kilometres from the nearest school; the SEN children are provided free transport regardless of the proximity

<sup>90</sup> Strategy for Inclusion of Roma of the Municipality of Bitola.

<sup>91</sup> [http://www.strumica.gov.mk/index.php?option=com\\_content&view=article&id=678:2010-2-10&catid=186:--2010&lang=mk](http://www.strumica.gov.mk/index.php?option=com_content&view=article&id=678:2010-2-10&catid=186:--2010&lang=mk)

<sup>92</sup> Law on Primary Education, Official Gazette of RM, 103/2008, Article 51.

<sup>93</sup> Ibid. Article 50.

of the school they attend.<sup>94</sup> Also, there is a legal obligation that for every child with special needs in the class, the number of students should be reduced by 3, although this is rarely being respected in practice.<sup>95</sup> Additional incentive provided to schools to increase their 'inclusiveness' is related to the school budget, i.e. with the per-capita financing of schools, the costs for one SEN child are calculated twice as much as the costs for a regular child.

An additional supportive measure is the provision of free textbooks (for primary and secondary education) for all students, aimed to reduce the costs of schooling. However, since certain categories of children from socially disadvantaged families, despite the support provided, were not able to cover the complete costs<sup>96</sup> certain NGOs also occasionally provide materials such as notebooks, pens etc. However, this hasn't become a systemic procedure yet and is dependent on support from donors.

When it comes to financial incentives, the largest ones are the Conditional Cash Transfers (CCTs) provided to children whose family receives welfare assistance, and conditioned with the 'behaviour' of the recipients, i.e. regular attendance of school. Roma secondary school students (400-600 a year) are entitled to a scholarship and mentorship support provided they regularly attend school and demonstrate a GPA above 3.00. While initially a donor-driven initiative, this mechanism was integrated into the system in 2009/10 when the MoES took the responsibility for providing part of the funds for scholarships.

The social inclusion measures also included revision of the textbooks, with the new Concept on Writing and Evaluating Textbooks including guidelines for greater inclusiveness as regards to gender and ethnic sensitivity. Despite the efforts made for ensuring non-discrimination and inclusiveness, studies show that certain textbooks (and the related syllabi) still lack the necessary gender and ethnic perspective.<sup>97</sup> Furthermore, the aspect of sensitivity towards people with disabilities is not sufficiently included, although it is planned with the latest National Strategy for Equal Opportunities.<sup>98</sup>

Concerning tertiary education, several inclusion mechanisms are provided. Specifically, the latest amendments to the Law on Tertiary Education<sup>99</sup> include a provision which exempts: children without parents, persons with first and second degree of disability, military invalids and children raised in orphanages, from paying university fees. Another mechanism which refers to the inclusion

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<sup>94</sup> Ibid. Article 61.

<sup>95</sup> Interview with Rosica Koleva, President of the Association for Support of Persons with Down Syndrome 'Sinolicka'.

<sup>96</sup> See more: How to achieve 100% enrolment in secondary school?, CRPM, 2009.

<sup>97</sup> Tulaha Tahir, Primary education in Macedonia from the aspect of gender equality and multiculturalism, MA Thesis, Euro Balkan Institute, 2011.

<sup>98</sup> MTSP, National Strategy for Equal Opportunities.

<sup>99</sup> Official Gazette of RM, 35/2008, Article 87.

of students from non-majority communities are the 'quotas' for minority communities, which enable these students to enrol into tertiary education with less 'points' (calculated on the basis of secondary school GPA and mark from the State Matriculation Exam) than students on the 'regular' list. Finally, an extensive donor-driven scholarship and mentorship scheme is developed for supporting Roma tertiary education students.

## **3.2. Discrimination in the area of health**

### **3.2.1. Anti-discrimination in related national sectoral legislation**

Article 4 of the **Law on Health Protection**, concerning Human Rights and Values in Healthcare stipulates that "Every citizen has the right to healthcare respecting the highest possible standard of human rights and values, i.e. s/he has the right to physical and psychological integrity and to security of his personality, as well as respect for his moral, cultural, religious and philosophical convictions."<sup>100</sup>

The principle of equity in healthcare is accomplished by prohibition of discrimination in the provision of healthcare in terms of race, sex, age, nationality, social origin, religion, political or other belief, property status, culture, language, type of illness, mental or physical disability.<sup>101</sup> These areas are limited and not comprehensive. The anti-discriminatory provision is not in line with the more comprehensive open provision in the Law on Protection of Patients' Rights, which includes sexual orientation as a protected ground.

The section on health activities at the primary health protection level in this law includes anti-discrimination issues in special areas and groups such as: implementation of special programs for the chronically ill and the elderly; health activities in the field of sexual and reproductive health; health activities for children and school youth; health activities in the field of health and safety at work; implementation of preventive measures and programs for children, youth, women, workers and the elderly and other vulnerable groups, such as groups that are particularly exposed to certain health risks; implementation screening programs to detect risk factors of disease occurrence, screening and early detection of disease signs, except those screenings that specialized hospitals in other levels of health protection are responsible for; medical treatment and medical rehabilitation of adults, children and youth with special needs; immunization.<sup>102</sup> Unfortunately, the health rights of sex workers are not protected by any law, although they face higher risks of discrimination, violence and social exclusion. LGBT (Lesbian Gay Bisexual Transsexual) rights also need

<sup>100</sup> Law on Health Protection, Official Gazette of RM, 43/2012, Article 4.

<sup>101</sup> Ibid., Article 9.

<sup>102</sup> Ibid., Article 30.

to be improved within the health protection law, in addition to defining a legal framework for transgender persons, procedures for treating persons who want to change their sex, etc.

The health issue for prisoners and detainees, along with their living conditions and overcrowding, is the biggest problem that they are facing. Inadequate facilities (hospitals), lack of equipment, medicine and medical personnel, persons in detention institutions have numerous objections especially to health workers in terms of their professionalism, and accessibility for people in need of emergency assistance. That excludes this marginalized group from receiving adequate mental and physical healthcare.

Article 17, of the Law on Health Protection covers the network of health facilities, which is determined by the Government based on the following criteria: population's needs for health services; number, age, gender, social class and health status of residents in the area; ensuring equal availability of health services, especially for outpatient treatment and emergency medical help. Some drug addicts face a problem in getting their daily therapy in centers located far away, as there is none close to their place of residence. These centers are planned to be opened, but have not been to date.

In the **Patient Rights Protection Law** there is a non-discrimination clause that defines the right of patients for healthcare 'without discrimination based on gender, race, skin color, language, religion, political or any other belief, national or social origin, national minority, property, birth origin, sexual orientation or any other status.'<sup>103</sup> Health services are equally available and accessible to all patients without discrimination, and just and fair procedures (based on medical criteria, without discrimination) are to be employed when selecting patients for treatments with limited availability. Opposite to this article, there was a reaction from people living with HIV about the respect of their rights in cases where medical care was refused and the right to confidence of medical data was violated. Also there are cases with children drug addicts, exposed to discrimination from health services, due to which they are treated in unsuitable health institutions or are not treated at all.<sup>104</sup>

Article 51 in the Law on Protection of Patients' Rights states that a State Commission for Promotion of Patients' Rights has to be established which should control the implementation of the law in practice. There is no information from the Ministry of Health about establishing such a commission, which is necessary to inspect whether the system for protection of patients' rights functions as designed.

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<sup>103</sup> Patient Rights Protection Law, Official Gazette of RM, 82/2008, Article 5.

<sup>104</sup> See more in Section 3.2. Discrimination in the area of health.

The **Law on Health Insurance** outlines a system for obligatory health insurance in which the key values are equity and solidarity, as well as the provision of universal coverage of the population with a comprehensive healthcare package. Health insurance is regulated by the Health Insurance Law to include compulsory payroll-based health insurance. However, this law also provides for additional voluntary health insurance that individuals may secure for themselves.

Anti-discrimination issues are tackled by distinguishing vulnerable groups that are more protected or that are given certain incentives in the areas of insurance and healthcare.<sup>105</sup> With the amendments to the Health Insurance Law of 2011, unemployed persons actively seeking work, with a monthly family income above 11,000 MKD, lose the right to compulsory health insurance based on unemployment. Health security of this vulnerable group of unemployed persons and their families is threatened. In the section of this law for exemption from participation, the average amount of 20% of the total costs for health services or drug is waived for: children with special needs, according to the regulations of social protection; permanent financial assistance users, residents in social care institutions or in a foster family, according to regulations of social protection, except for drugs from the drug list on the official drug paper edited in primary healthcare and for treatment abroad; mentally ill patients in mental hospitals and mentally challenged persons lacking parental care, and for insured persons whose family income is lower than the average salary in Macedonia from the previous year.<sup>106</sup>

Other anti-discriminatory policies of the Law on Health Insurance towards some vulnerable categories are carried through preventive programs for treatment of specific diseases, providing funds to cover the expenses for certain diseases or a certain category of insured. These programs are subject to change and are issued each year.

### ***Programs and strategies***

There are numerous ongoing programs and strategies in the Ministry of Health that include special needs for specific groups of people. There are strategic policy

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<sup>105</sup> Law on health Insurance, Official Gazette of RM, 65/2012, Article 5.

<sup>106</sup> Ibid., Article 34

documents that advocate preventive and care measures and foster inclusion of certain categories of people.<sup>107</sup>

The number of these programs and strategies is huge, but the LGBT are again excluded as a vulnerable group. Besides, there are problems with the full implementation of these strategies and programs. In the drug abuse program, the Ministry's 2012 Program foresees opening new Service Centers for Prevention and Treatment of Drug Abuse in the Republic of Macedonia, e.g. in Veles, Prilep and other towns. They will be financed by the Program for Health Protection of Individuals with Addiction Illnesses for 2012. Unfortunately, the program allows for minimal increase in the percentage of included drug addicts, which is far from the real number and the needs of drug addicts. Treatment programs face serious challenges in closed institutions. There is a serious problem with drug addicts below the age of 16. They are often exposed to discrimination from health services, as a result of which they are treated in unsuitable health institutions or are not treated at all.

In the **Program for Protection of the Population from HIV/AIDS** in the Republic of Macedonia<sup>108</sup> the budget was cut for Associations and Foundations for implementation of preventive activities for HIV/AIDS. The successful implementation of HIV prevention programs for members of marginalized groups is a real issue. HIV/AIDS therapy is facing problems in continuous therapy provision, which reached its peak when the Ministry of Health faced some administrative and legal obstacles during the procedure for purchasing medicines.

The **National Strategy for Sexual and Reproductive Health** of the Republic of Macedonia was adopted by the Government of RM in February 2011 (2010-2020). Unfortunately the three-year action plan, annexed to the strategy, was not adopted because, as mentioned by the Fund for Health Insurance, the financial possibilities are limited, and it is impossible to plan finances for placing

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<sup>107</sup> Macedonian National Annual Program for Public Health for 2012; Health for All program for 2012; Program for active mother and child healthcare protection in Macedonia for 2012; Obligatory population Immunization Program 2012; HIV/AIDS population protective program for 2012; Program for compulsory health insurance of the population- citizens that are not compulsory health insured for 2012; Healthcare Program for people with addiction for 2012 ; Health protection Program for mental disorder individuals for 2012; Program for research on brucellosis occurrence, prevention and eradication in the population in 2012; Program for treatment of rare diseases in the Macedonia for 2012; Program for providing the cost of patients treated with dialysis and activities for patients with hemophilia in Macedonia for 2012; Program for organizing and promoting blood donation in Macedonia for 2012; Program measures for the prevention of tuberculosis among the population of Macedonia for 2012; Program for early detection of malignant disease in Macedonia for 2012; Program for systematic health survey of students in Macedonia for 2012; Program to provide insulin, insulin needles, glucagon, sugar measuring tape and education of diabetes treatment and control for 2012, National Strategy for Sexual and Reproductive Health of the Republic of Macedonia (2010-2020), National strategy for promoting mental health in RM 2005/2012 etc.

<sup>108</sup> Official Gazette, 7/2011; amended in November, 2011; Official Gazette 149/2011.



a minimum of one contraceptive on the positive medicines list. The National Strategy provides for better access to modern contraception covered by the health insurance system and introduction of sexual education that contains syllabi addressing modern means for contraception. Opposite to the strategy, the Minister of Health publicly stated that there shall not be any oral contraceptives on the positive list. The problem of no action plan in the strategy is present also in the Mental Health Strategy.

### **3.2.2. Anti-discrimination in practice**

Two cases of discrimination in Macedonia's health sector are presented below. One is provided by the Ombudsman (Case Study 4) and concerns children with hearing impairment, and the other - by the HOPS organization (Case Study 5) and concerns the treatment of a child addicted to drugs.

Solving the problems in these two cases was incomplete. In the first case there were not enough implants for the children waiting, and in the other, the child was hosted in an inadequate institution.

#### **Case Study 4**

##### ***Inadequate treatment of children with damaged hearing***

In 2011, the Ombudsman received a complaint which concerned Children with damaged hearing. This group is exempted from participation by the Fund for Health Insurance. Nevertheless, they were required by the Fund to pay 20% participation for treatment abroad, although they possessed adequate certificates for their state of health. The Ombudsman informed the Minister of Health, after which it was established that the Ministry couldn't provide the appropriate treatment to these children at the appropriate clinic, because the clinic was out of cochlear implants. As a result of the Ombudsman activities the Ministry sent a request to the Board of the Fund to provide such implants for the Ear, Nose and Throat Clinic –Skopje. After that, the clinic performed the required interventions to part of the children who waited for the implants. The fact that the intervention was just performed to part of the children shows that this problem is not a long-term solution. It needs assessment and system's match-up to provide stable healthcare to this group.

Source: Ombudsman Annual Report, 2011

## Case Study 5

### *Improper treatment of a Roma child addicted to drugs*

On May 16, 2011, the social worker at the PHI Clinic for Children Illnesses in Skopje informed HOPS that the clinic hospitalized an underage child at the age of 12-13 under influence of opiates, brought unconscious by the police. The child was 13 years old, under the custody of ICSW (i.e. the Home for Children without Parents May 25th in Skopje), and after the administered medical intervention had an abstinence crisis, without being assigned a proper therapy. The medical personnel and social worker in the Clinic for Children's Illnesses contacted the Psychiatry Clinic as regards the minor's treatment, however the telephone answer was that the child was not in their competence for the Psychiatry Clinic did not have the conditions to treat children under the age of 14. Still, HOPS has received notification from PHI Psychiatry Clinic on the ability to treat minor children under the age of 14 from addiction illnesses. In the meantime, on May 30, 2011 HOPS received information from the Psychiatry Clinic that the Clinic is not registered for treatment of addiction illnesses, however it is willing to participate in a consular multidisciplinary and inter-clinic treatment of addiction for minors under the age of 14.

After a psychiatrist examined the child, and prescribed the proper medicaments for abstinence crisis, it remained in the Pulmonology Department for treatment, which was inadequate for treating addiction illnesses. After detoxication from opiates, the ICSW social worker was contacted once again to inform her that the Pulmonology Department is inadequate for this kind of treatment, whereupon it was stated that although there is no actual need for the child to remain in the hospital, it is homeless, since the Home for Children without Parents does not wish to accept him back. On November 16, 2011, the ICSW social worker stated that the child was accommodated in the Geriatric Centre Sue Rider in Skopje for about two months. On December 22, 2011, the ICSW social worker was contacted again with the purpose to arrange a visit of the child in Sue Rider, however there was information that because of the deteriorated health state, the child was once again transferred to the Clinic for Children's Illnesses – Pulmonology Department, since the Clinic for Surgery and Orthopaedics refused to admit the child and to perform a surgery. HOPS submitted petitions to the State Health Inspectorate, the Commission for Protection of Patients' Rights within the Fund for Health Insurance and the Minister of Health pursuant to the Law on Protection of Patients' Rights, however has not yet received an answer in 2012. The Coalition indicates that the problem of minors using heroin (in particular Roma population) is still critical and that research warns "there is a larger number of minor Roma using drugs from an early age" to the

Ministry of Health 109. The Coalition appeals that the recommendation “the opening of a Centre for treating drug addictions in Shuto Orizari immediately is of utmost importance. The authorities should consider the necessity and possibilities for the establishment of such centers in other communities where the dominant population is Roma”. The Coalition demands that the Ministry of Health remove the legal and institutional obstacles for treating children under the age of 16 and provide better conditions for treating children, including programs for re-socialization. The Coalition appeals to the Ombudsman to investigate the case of multiple discrimination and improper treatment of a child-addict to drugs, bearing in mind that the guardian’s efforts (ICSW) did not result with improvement of the child’s health state or improvement of the treatment quality.

Source: Healthy Options Project Skopje, <http://hops.org.mk/>

### **3.3. Discrimination in the area of domestic violence**

#### **3.3.1. Anti-discrimination in related national sectoral legislation**

In the first decade following the independence of the country, the civil society was the main provider of protection for victims of domestic violence. However, with the increase of the number of victims, or at least this problem getting popular, the state gradually assumed its role. The main national laws which regulate the sphere of domestic violence are the Law on Family and the Criminal Code. By incorporation of the provisions of domestic violence in the respective Laws, the victims are provided legal protection in both civil and criminal procedures. Hence, the previously accepted concept that the domestic violence belongs to the private sphere was abandoned and it was transferred to the public sphere where it became a state problem. Firstly regulated in 2004, with several subsequent amendments in 2006 and 2008 the national legal protection against domestic violence was brought closer to the European standards. It is important to note that in July 2011, Macedonia signed the Convention on Preventing and Combating Violence against Women and Domestic Violence but has not ratified it yet.

Definition of domestic violence is provided in section 6a in the Law on Family<sup>109</sup> and Criminal Code.<sup>110</sup> However, the definitions of domestic violence employed in these two laws are not the same and as such they do not provide the same range of applicability. Therefore, there is a perceived need for uniform definition on what constitutes domestic violence.

<sup>109</sup> Law on Family, Official Gazette of RM, 84/2008, Article 94.

<sup>110</sup> Criminal Code, Article 122 point 21.

Although at first sight the provisions stipulated in the Law on Family seem wide ranging, there is a criticism that there is not protection afforded to people who are in same sex relationship. In the Macedonian legal system a marriage is an institution between a woman and a man, and the Law on Family, Article 94b, (3), which regulates domestic violence stipulates that under “close personal relations’ the law understands “personal relations between people from different gender...”. As the protection offered does not apply to people who have close personal relations with people from the same gender, the Helsinki Committee in May 2012 initiated a procedure before the Constitutional Court claiming that this provision discriminates against persons who have close personal relations with persons of the same gender. Until today, the Constitutional Court has not delivered opinion upon this initiative.

In addition to the Law on Family and the Criminal Code, the National Strategy 2008-2011 for protection against domestic violence is the “basic strategic document of the Republic of Macedonia that is designed to determine the strategic guidelines and priorities in suppressing and preventing this type of violence and identifying the responsible authorities for their implementation”.<sup>111</sup> Further, for the same period, with combined action of the Ministry of Labor and Social Policy, and five UN agencies: UNDP, UNFA, UNICEF, WHO and UNIFEM, the program for building of the national capacities for prevention against domestic violence was implemented. The report which summarizes the project activities was not completed while writing this report.

As police units are the first units to which victims report about violence it is important to become gender sensitive and familiar with the procedure for protection. As specified in the Law on Family, the Centers for Social Work are the leading institutions which provide immediate assistance to the victims, through providing psychological treatments, accommodation, health and legal assistance, and recommendation for protection measures. It is essential to note that the civil society sector is also empowered to provide psychosocial assistance, accommodation, health and legal assistance.

### ***Accommodation***

Sheltering or necessary accommodation in the country was initially provided by the civil society sector and later was provided by the state. In this context, the MLSP developed a Rulebook for establishment and Operation of Shelters for Victims of Domestic Violence. As of 2009 there are 7 state shelters and 3 CSO operated shelters, which makes a total of 10 shelters on the territory of the Republic of Macedonia. In that light there are two CSO shelters for temporary sheltering “Crisis Center Hope” operating since 2001, and the “Transit House” of the Women’s Organization of the City of Skopje opened in 2005, and also one shelter for long-term sheltering opened

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<sup>111</sup> [http://nkt.mtsp.gov.mk/nkt/Content/Documents/Nacionalna\\_strategija\\_za\\_zastita\\_od\\_semejno%20nasilstvo.pdf](http://nkt.mtsp.gov.mk/nkt/Content/Documents/Nacionalna_strategija_za_zastita_od_semejno%20nasilstvo.pdf), p. 71.

in 2001. On the other hand, four state shelters were opened in 2004 and they are located in Skopje, Kocani, Strumica, Bitola; two were opened in Ohrid and Kumanovo while in 2009 a shelter was opened in Prilep.<sup>112</sup> The capacity of the ten shelters is 93<sup>113</sup> places while the number of cases of domestic violence is around 870 cases. The low capacity of the shelter centers results turning down a number of victims for accommodation and as such it results in further degradation and humiliation of the victims from the system.<sup>114</sup>

In 2011, 156 clients used the services of the Center for legal assistance and 45 clients used the facilities of psychological counseling.<sup>115</sup>

### ***The victims***

A research conducted shortly before the adoption of the National Strategy shows that every fifth women has been a victim of physical violence and every tenth has been a victim to sexual violence.<sup>116</sup> A striking fact is that in 58,3% cases the children were present at the scene of violence<sup>117</sup> and in 20% - even the kids have been subjected to violence.

The statistics of the Macedonian women's rights center- Shelter Center - shows that 2/3 of the victims are over 40, the majority are without higher education and unemployed and are from rural areas.<sup>118</sup> Another study indicates that women from Roma ethnic origin are especially susceptible to structural violence and in addition face setbacks, due to low education and discrimination by institutions, when asking for institutional help.<sup>119</sup> The widespread stereotypes for the role of women in society as well in the family is reflected in the high number of 28,3% of the women to accept the domestic violence upon them.

### **3.3.2. Anti-discrimination in practice**

The selected cases below illustrate different individual life situations of either domestic violence reported and follow up actions initiated towards it with diverse degree of success and solution or cases of discrimination on the grounds of gender identity. Despite their individual specifics all three cases demonstrate strong connection between civil society organizations and coalitions with the affected groups and show a relatively successful representation of the victims before the competent authorities. However, the three cases are exemplary

<sup>112</sup> [http://www.esem.org.mk/Root/mak/default\\_mak.asp](http://www.esem.org.mk/Root/mak/default_mak.asp), p. 7

<sup>113</sup> [http://www.esem.org.mk/Root/mak/default\\_mak.asp](http://www.esem.org.mk/Root/mak/default_mak.asp), p. 7.

<sup>114</sup> [http://www.semejnonasilstvo.org.mk/Root/mak/\\_docs/Analiza%20na%20zasolnista.pdf](http://www.semejnonasilstvo.org.mk/Root/mak/_docs/Analiza%20na%20zasolnista.pdf), p. 28.

<sup>115</sup> Information from esem, received on 25 June, 2012.

<sup>116</sup> [http://www.esem.org.mk/Root/mak/default\\_mak.asp](http://www.esem.org.mk/Root/mak/default_mak.asp), p. 7 and 8.

<sup>117</sup> [http://www.esem.org.mk/Root/mak/default\\_mak.asp](http://www.esem.org.mk/Root/mak/default_mak.asp), p. 12.

<sup>118</sup> UNDP survey, available at <http://www.undp.org.mk/>

<sup>119</sup> [http://www.unifem.sk/uploads/doc/SN\\_kaj\\_Romska\\_populacija\\_i\\_odgovorot\\_na\\_institucite\\_na\\_drzavata.pdf](http://www.unifem.sk/uploads/doc/SN_kaj_Romska_populacija_i_odgovorot_na_institucite_na_drzavata.pdf)

of the imperfection of the legal procedure provided in the current legislation for protecting the rights of victims, of the low coordination between respective competent authorities in investigating and solving the cases, and of the ignorance and lack of trust of the alleged victims towards the protection mechanisms.

### Case Study 6

#### *Domestic violence related to sexual and health rights violation*

The report of the Coalition “Sexual and Health Rights of Marginalized Communities” from 2011 pointed out a case of multiple violations on the rights of a sex worker. In particular several years ago, the civil society organization HOPS- Healthy Options- pointed out to the Center for Social Works {hereinafter: CSW} a case of domestic violence inflicted against a sex worker from her extramarital partner as well as third persons. The case was further complicated, as HOPS indicated that there is “possible disability in the psychological development” and that the person is not under expert and professional supervision.<sup>120</sup>

In 2008 HOPS sent a request to the Inter-municipal Center for Social Works {hereinafter: ICSW} to investigate the case of physical and sexual abuse of the sex worker. From the inspection conducted at her home and the discussion conducted with the neighbours where the victim lived, physical injuries were ascertained. HOPS continually followed the case of the sex worker but ICSW did not undertake any measures with exception of a written notification of the insight made at the home of the victim. The situation of the sex worker additionally deteriorated at the beginning of 2011 when as a result of sexual abuse by her extramarital partner and third persons the victim got pregnant. Even though she was pregnant, the physical and sexual abuse continued, so she left her home where she lived with the extramarital partner and was left on the streets. Since she found herself on the streets, the HOPS’ team once again tried to use the Protection Mechanism for Victims of Domestic Violence and the Help and Support of Socially Excluded Persons. At first they tried to accommodate the victim so they could get her off the streets and then, to examine the case of domestic violence and initiate a procedure against the perpetrator.

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<sup>120</sup> At the end of 2008 HOPS demanded the Unit for adults protection at inter municipal center for social works Skopje to initiate procedure evaluation of her psychophysical condition and if necessary to appoint legal guardian who will protect her rights. Until 2012 the procedure is not completed.

A written request was filed to ICSW to solve the case, few meetings were held, and contacts with the representatives of ICSW were made, but so far neither a procedure has been initiated, nor has any protection mechanism been used for victims of domestic violence.

ICSW issued an opinion that “the person is not in a condition to cooperate in order to improve her position”, the sex worker who was a victim of domestic violence is left on the street without appropriate professional care. Further, ICSW –Skopje continued to gather statements of the sex worker only in the presence of her extramarital partner, and then she was denying the allegations of violence.<sup>121</sup>

In the report of the coalition Sexual and Health Rights of Marginalized Communities for 2011 it was noted that on 15.04.2011 the civil society organization HOPS submitted a petition to the Ombudsman on account of ICSW’s failure to act.<sup>122</sup> The petition states the victim of family violence “is pregnant against her will as a result of sexual abuse from her partner and third persons”. In the meantime, the pregnant sex worker became homeless, since she refused to return to the home of the extramarital partner, claiming that he physically abused her, as in the past when she was pregnant and he punched her in the stomach and forced her to go out on the street and bring 6,000 MKD daily. In addition, HOPS indicated that when the victim was asked in ICSP whether there were any chances for her to return home, she responded that she did not wish to return because her partner “abuses her physically and sexually, punches her in the stomach and the body while she is pregnant and forces her to offer sex services, earn money and carry the money to him”. Still, ICSW’s representatives, ignoring the victim’s statement, failed to protect her from further violence. HOPS’ attempts to accommodate the sex worker-victim of domestic violence were unsuccessful. Her economic and social condition made her particularly vulnerable, as she had no home of her own and the only house that she could use was that of the extramarital partner who abuses her sexually and physically. In the periods when she ran away from him, she lived on the streets. After several unsuccessful attempts made by HOPS to take care and place her in an appropriate institution, finally she was placed in the ICSW’s Shelter for Homeless People. However, the ICSW imposed a condition for placement the sex worker in the Shelter Center which constitutes a discriminatory act. In particular, ICSW demanded HOPS to deliver results from medical examinations on her health status,

<sup>121</sup> Also in the past when a statement was taken in the presence of the extramarital partner, the sex worker denied the allegations of violence, even though she had visible signs of violence. Even though, the social workers detected the traces of violence they did not take any measures.

<sup>122</sup> In March 2011, HOPS filed request for compensation for termination of pregnancy, in order the victim to be provided safe and legal abortion. The request was filed because the woman has been victim of multiyear domestic violence and because of her weak economic and social position as a result of which she was unable to cover the costs for abortion. The Competent institutions still have not replied on the request and the victims had to deliver the child.

due to “the fact that the mentioned person belongs to a high-risk category for transmitting infections”. In the National HIV/AIDS Strategy 2007-2011: “affiliation to a certain group does not increase the risk of infection, but rather, the attitude of an individual, and because of this, her/his bigger exposure to the virus is what places this person under greater risk, i.e. in a certain risk group”. HOPS pointed out and informed ICSW Skopje that such an act is discriminatory. ICSW accepted the victim without insisting on further medical examination. HOPS continues to visit the sex worker in the Shelter Center for Homeless people and inform on her condition. Upon HOPS’s visit to the Shelter for Homeless People the victim stated that she was raped by a villager from the nearby village in her room in the Homeless Shelter. Although the manager of the Shelter was notified about the possible rape, she did not report the case, nor was the pregnant sex worker examined by a doctor which is an extremely important procedure not only for her health but also to determine if there was a case of rape. The case was reported to the police three days later, in the escort of a social worker, however no one demanded an appropriate medical examination to be carried out. HOPS insisted on specialist’s medical examination to determine whether there were indications of rape. Then HOPS was notified that the sex worker was returned to her partner upon her request, only after a statement was signed in the presence of a psychologist, a legal representative and a social worker. Up to that day no medical examination was conducted. The following day HOPS contacted the sex worker and accompanied her to the Institute of Medical Jurisprudence, where they received the information that she should have been brought immediately. As 6 days had expired from the event, it would have been a problem to receive a relevant proof to determine rape. After this event, criminal charges were pressed to the Public Prosecutor’s Office in order to investigate the case and find the perpetrator but up to date there is no response. On May 07, 2011, HOPS received a response signed by the Minister of Labor and Social Policy claiming that “a range of activities to determine the actual state and help the aforementioned in cooperation with Police Station Gorce Petrov” were immediately undertaken, that she was “taken to gynecological examinations” and that “the medical examination showed no signs of violence”. In addition, the response indicates that the statement for committed family violence was withdrawn and that “the Centre for Social Work has no ground as a first-instance body to instigate a procedure for family violence”.

Source: Healthy Options Project Skopje, <http://hops.org.mk/>



## Case Study 7

### *Discrimination on the ground of gender identity*

In the report of the Coalition Sexual and Health Rights of Marginalized Community (SHRMC) from 2011 a case of multiple violence and discrimination on grounds of gender identity against a transgender person in Macedonia was documented. The person is a parent of two underage children. His children live with their mother and their grandfather (wife's father) in a surrounding where the grandfather constantly used threats and discriminatory remarks and offensive comments towards the person in question. The transgender person was not allowed to have contact with his children, even though there was an agreement with his wife that he can spend weekends with the children at his home. The Coalition SHRMC filed a request before the Center Social Works – CSW to regulate the meetings with the children of the person while the divorce procedure took place. However, SCW adopted a conclusion to suspend the procedure for determining parental rights, until evaluation of the mental condition of the children was done. In the meanwhile, in the absence of a formal decision for denial of his parenthood rights, instead of the father it was the CSW who signed a consent form for the children to travel abroad. As a result the Coalition SHRMC filed a complaint for the work of CSW, in connection to the limitation of parental rights and discrimination and violence which the transgender person faced in his surrounding and wider family, to the Ministry of Labor and Social Policy as well as criminal charges for abuse of official position by CSW for signing the consent on behalf of the child of the transgender person to travel abroad, to the Public Prosecutor's Office- Tetovo. Public Prosecutor's Office- Tetovo responded that there are no grounds for initiation of such a procedure. The Ministry of Labor and Social Policy did not respond to the complaint. The parental rights of the transgender person were continuously violated and limited and the person was not even allowed to visit his sick child while hospitalized. In particular, when the transgender person went to visit the child together with his mother (child's grandmother) they were told that men were not allowed to enter the unit, so only the grandmother was allowed to visit. Nevertheless, on the same date the grandfather, (the father of his wife) was allowed to visit. Due to discrimination on the grounds of gender identity, for preventing him to visit his child while in hospital, the person with the support of Coalition SHRMC sent an initiative to MLSP – Advocate for Equal Opportunities. The Advocate for Equal Opportunities did not find any discrimination on grounds of gender, explaining that the intentions of the employees of the hospital were not to discriminate against the transgender person, but to protect the interest of the underage child. Since MLSP, did not act upon the complaint, at the end of 2011, the Coalition SHRMC filed a petition to the Ombudsman, in which it requested to examine the work of the CSW and MTSP and MOI (related to the complaints for police failure to

act).<sup>123</sup> The Ombudsman informed the Coalition SHRMC about the actions undertaken. In particular, it required information and received feedback from the competent institutions that are CSW, MLSP and the unit at the Internal Affairs and Professional Standards in which it was proven that the institutions worked to the best interest of the underaged child. Currently, there are several procedures against the transgender person which are taken by competent bodies and decisions are taken quickly. The person has also initiated several procedures against state bodies and physical persons, but for these procedures decision making goes slowly, or the competent bodies do not even comment on the allegations. The person has filed a petition to the Commission against Discrimination but still waits for the response.

Source: Healthy Options Project Skopje, <http://hops.org.mk/>

## Case Study 8

### *Domestic violence between relatives*

At the beginning of 2012 a sex worker addressed the civil society organization STAR-STAR on the occasion of serious indications for multi-year domestic violence inflicted on her from her son. STAR-STAR, members as well as field workers are familiar with the case. In particular, for several years now the sex worker has been victim of physical and sex abuse from her son, who has also coerced her to provide sexual services to third persons, and was taking away the money.

Due to the specific nature of the case the sex worker is not motivated to initiate a procedure before the competent institutions, the reasons being that the perpetrator is her own son, and because of her difficult economic and social situation.

In the period when the victim asked STAR-STAR for assistance, the Ministry of Labor and Social Policy was running a media promotion campaign for protection from domestic violence and promoted SOS line for reporting such cases. The sex worker demanded to report the case on the SOS line and to receive accommodation in some of the shelters. STAR-STAR in the presence of the sex worker reported the case of domestic violence on the

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<sup>123</sup> In 2011 the transgender person informed the Coalition for multiple cases of violence, discrimination and social exclusion in his environment. The violence cases instigated by the surrounding progressed when person spoke openly about his problems in the media, as a person currently in the phase of a sex change. These cases of violence and discrimination were duly reported to the Ministry of the Interior. At one point, the person reported a physical assault at his home, after the incursion of another villager who was previously reported to the police for his violent behavior.

SOS line and provided all the specific aspects of the case, not hiding that the alleged victim is a sex worker. The victim was advised “to talk with her son”. Even though STAR-STAR pointed out that it is a multi-year violence that includes physical violence, rape, and coercion of sex work and that the victim need be accommodated, the response remained the same - instead of being provided with accommodation and psychological assistance she was advised to talk with her son. On the request for accommodation the person employed at the SOS line informed that the capacities of the shelter center were fully occupied.

After the conversation with the person employed at the SOS line the victim was further de-motivated and rejected to initiate a procedure before other institutions. She returned to her son.

Source: The Coalition for Sexual and Health Rights of Marginalized Community

### 3.4. Discrimination in the area of employment

#### 3.4.1. Anti-discrimination in related national sectoral legislation

The main document which regulates the employment sphere is the **Law on Labour Relations**.<sup>124</sup> It contains specific anti-discrimination provisions related to both direct and indirect discrimination.<sup>125</sup> In contrast to the Law on Prevention and Protection against Discrimination, the Labour Law does not include the ground of political affiliation, which is perceived by citizens as the most frequent discriminatory ground, especially in the employment sector.<sup>126</sup>

Despite the general provision for prohibition of discrimination, the Law on Labour Relations provides special protection to women in fulfilment of the rights of employment taking into consideration the special needs of women. The law stipulates special protection for women during pregnancy and imposes an obligation to the employer to implement measures for improving the health and safety at work of the pregnant worker, or of one that has recently given birth or is breastfeeding.<sup>127</sup> In order to harmonize the working and professional obligations, in the section on Special Protection, the lawmaker separately regulated the right of women in cases of pregnancy and parenthood as well as the parents who are employed.<sup>128</sup> However, analysing the provisions of the law more closely sheds light on certain aspects which might be misinterpreted. For example, Article 8 states that it would not be considered as discrimination

<sup>124</sup> Law on Labor Relations, Official Gazette of RM, 158/2010.

<sup>125</sup> Article 6 and 7.

<sup>126</sup> MCMS survey, Barometer of equal opportunities; CRPM, How to eliminate discrimination in the public sector?, 2011.

<sup>127</sup> Law on Labor Relations, Official Gazette of RM, 158/2010, Article 42.

<sup>128</sup> Ibid., Article 161.

differentiating and giving priority to someone if the nature of the job, or the conditions in which it is performed, are such that certain characteristics of the employee can be a determining factor for performing the job tasks.<sup>129</sup> In addition, Article 24 states that the employer cannot advertise a specific job only for men or women, except in cases when the gender is a necessary precondition for performing the job. While in theory these types of provisions are a necessity, in practice their vagueness and openness to interpretation can open space for manipulation.

The law contains several provisions specifically related to providing equal opportunities to men and women. In particular, the employer cannot cancel the job contract in the case of: pregnancy, giving birth and parenting, absence due to childcare.<sup>130</sup> Men and women should be paid equally when performing equal jobs with equal requirements.<sup>131</sup> Besides these rather clear provisions, women are supposedly 'protected' by being exempt from night work in the industry and construction sectors, with the possibility for night work if serious social or economic conditions require this.<sup>132</sup> While designed as a regulation aiming to protect women, it can potentially be discriminatory if women want to work night shifts, for example to earn extra salary, since night work is usually paid more.

With regards to the rights and responsibilities of the employer, the law specifically states that the employer should not request information on the family status of the potential employee and cannot condition hiring or dismissal from work on the basis of these data.<sup>133</sup> Also, in cases of pregnancy and parenting, the employer is obliged to enable the employees easier balancing of family and work responsibilities.<sup>134</sup> Some of the possible balancing methods are elaborated in the law further on, such as: if the pregnant female employee performs a job which could be damaging for her or the baby, the employer is obliged to provide another appropriate position<sup>135</sup>; the breastfeeding mother is entitled to a break from work in 1.30 hours up until the child is one year old<sup>136</sup>; during pregnancy or one year after giving birth the employee should not perform night shifts or overtime, until the child is three-years old the mother can work overtime or night shift only upon her written agreement; the father can be transferred these rights only if the mother dies, leaves the family, etc.<sup>137</sup> These provisions (except for the ones related to breastfeeding mothers) can also be problematic since they do not provide an option for the

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<sup>129</sup> Free summary of the article.

<sup>130</sup> Law on Labor Relations, Official Gazette of RM, 158/2010, Article 101.

<sup>131</sup> Ibid., Article 108.

<sup>132</sup> Ibid., Article 131.

<sup>133</sup> Ibid., Article 25.

<sup>134</sup> Ibid., Article 161.

<sup>135</sup> Ibid., Article 163.

<sup>136</sup> Ibid., Article 171.

<sup>137</sup> Ibid., Article 164.

woman to choose whether she wants to be engaged overtime or work during the night. Moreover, a particularly discriminating provision is the un-inclusion of men/fathers as the possible child-rearing parent with special rights for flexible work. Instead, it continues the stereotypical portrayal of women as the parent whose role is to take care of the children, while the men/fathers can take over this position only in cases when the mother is not available (i.e. has left the child or died). The traditional role of the father is partially challenged by the provision that in case the mother does not use the parenting leave after childbirth, it can be used by the father.<sup>138</sup>

Finally, the law includes special provisions which entitle the parent of a child with special needs to work part-time while being paid full-time, in case the child does not attend a specialised institution.<sup>139</sup>

In the case of unequal treatment, the job applicant, that is the worker, has the right to a compensation for damages and in the procedure for protection against discrimination, the burden of proof falls on the employer, unless s/he can prove that unequal treatment was the result of the enforcement of special measures that do not represent discrimination. The workers have the right to demand protection of their rights including the right for protection against discrimination in a procedure before the employer and competent courts.

### **3.4.2. Anti-discrimination in practice**

The grounds of discrimination in the private and public sectors in the area of labor vary greatly. While in the public sector discrimination on the ground of political affiliation and ethnic background is the most widely perceived, in the private sector the most frequent grounds are gender and age. The vast majority of interviewed stakeholders consider the private sector as a more fruitful ground for discrimination. Some even consider that the ‘inspections tolerate private businesses’. Part of the stakeholders point out that discrimination in the public sector is usually hidden, for example the systematization of work positions opens space for discrimination, which is allowed on a formal level, but in reality can pose threats to the unequal treatment of employees and eventually disrespect of the ‘equal pay for equal work’. However, representatives of local Ombudsman’s offices report that claims are usually led as breach of employment rights, not discrimination, although some include discriminatory aspects. This can be due to the lack of awareness of the concept of discrimination and its manifestations, but is probably also coupled with the fear faced by employees to report discrimination, since they believe they would be stigmatized by the community and lose their job and potential

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<sup>138</sup> Ibid., Article 164.

<sup>139</sup> Ibid, Article 169.

further employment prospects. The fear is particularly evident in smaller cities, where people know each other closely and information spreads fast.

Requirements which can be considered discriminatory are overtly published in job announcements, mainly with regards to requiring employees of certain gender and age-group. Another practice is requesting a picture of the applicant, along with the rest of the documents, which might bear the risk of indirect discrimination on the grounds of gender, age, skin colour and 'attractiveness'. Typically, the public sector institutions are more careful when it comes to advertising positions and do not include discriminatory aspects. However, private sector employers show less sensitivity towards these issues and a certain number can include several discriminatory requirements.

Lately, cases of announcements have been reported when the company specifically requires female candidates, sometimes for jobs which have typically been perceived as 'male'. It is unclear whether the companies want to portray themselves as gender sensitive with these actions or actually use them as an affirmative measure for attracting more women in the traditionally 'male' occupations. An example is 'Company XXX which requires a machine engineer, woman, aged 25-30, to work with spare automobile parts (...)'. Regardless of the intention, these announcements can in fact produce the opposite effect through openly discouraging (and hence discriminating) potential male employees (with the right qualifications).

It is clearly stated that multinational companies are more prone to publish job announcements with 'equal opportunities' principle. An example is the following 'Company XX provides equal opportunities for employment and positively supports applications from appropriately qualified candidates regardless of gender, race, disability, age, sexual orientation, religion or belief'. This is practiced primarily because the recruitment of these companies is conducted by HR/headhunting companies, who need to adhere to certain standards when advertising positions. Therefore, it is yet to be determined whether this proclamation is in fact practiced or is just declarative, since anecdotal evidence indicates that while companies declare providing equal opportunities, in the selection process they can eliminate certain type of candidates.

After initial employment, discriminatory practices can vary with regards to the type of company/institution (private, public) and characteristics of employees. While, collective agreements include a direct clause on non-discrimination, it refers to the protection provided by other laws (not specifying which) and the possibility that the employee be reimbursed according to the Law on Contractual Relations. The absence of specific information in the article can hinder employees from understanding the possible forms of discrimination at the work place and the available mechanisms for protection. Perhaps this is the reason why representatives of employers inform that no cases of

discrimination have been reported in their member companies and that in general, discriminatory actions may occur only unintentionally. However, it is questionable how much attention they have placed on this issue and how sensitive they are with regards to discrimination, bearing in mind that they haven't participated in anti-discrimination trainings/workshops.

### **Vulnerable groups**

**Women** can be particularly vulnerable to discrimination on the labour market both when it comes to achieving employment status or remaining employed. The initial setback is faced in the recruitment phase, when many (primarily private sector) employees pose questions on family status, child-rearing practices and plans for expanding the family. While there are no official data on the scope of this practice, a CRPM survey<sup>140</sup> determined that about 13% of the women have been asked on their plans to raise a family, while 7% reported they believed to have been excluded in the selection phase due to plans to raise a family. It is important to emphasize that about 80% of the respondents refused to answer these questions, which may be indicative of their fear to talk about these issues.

Despite the fact that the Labour Law provisions for equal pay for both genders, in reality the principle of equal pay for work of equal value is not respected. Employed women face discrimination with regards to the salary received. According to the UNDP Human Development Report (2009), the gender pay gap in Macedonia is 0.49 and compared to other Southeast European countries it is the highest. While wage differences are primarily related to the different selection of occupations/vocations between men and women, they nevertheless point out to the lower value which is being placed on traditionally 'female' occupations compared to those of males. In the same sectors, women are, on average, paid less than men, a fact which is most obvious in the sectors: construction, catering, and public administration.<sup>141</sup> Finally, working in the same position as men may sometimes result in different wages, due to traditional roles of women as caregivers for the family and the practices of certain companies to reduce salaries on the basis of sick-leaves used (see Case Study 9).

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<sup>140</sup> Towards Gender Equality in Macedonia, CRPM, 2009.

<sup>141</sup> Gender Pay Gap in FYR Macedonia, Kazandziska, M, Risteska, M, Schmidt, V, ILO, 2012.

## Case Study 9

### *Indirect discrimination in the textile industry*

The Branch Union of Employees in the Textile Industry noted an indirect discrimination with regards to the payment of male and female employees. Specifically, textile workers in certain factories are paid a bonus with regards to their regular attendance at work. Consequently, if an employee uses sick leave, s/he would be paid less for a certain month, based on the 'regular attendance' criteria. While this provision is not discriminatory by itself, it can be a 'trap' for gender discrimination bearing in mind the fact that women take more sick leaves compared to men when it comes to taking care of an ill child or an elderly family member. Hence, female employees tend to receive less money on the basis of this criteria compared to their male co-workers. The difference in sums is contingent to the total sum which the company has determined to pay, and varies depending on the company; however, the tendency of women receiving less than men is evident in all companies.

The Textile Union has alerted employers with regards to the issue and advised them to regulate it in the collective agreements in order to reduce effects on the difference in pay between male and female employees. However, as the Union reports, no specific actions have been taken yet by the employers.

Source: Elizabeta Gelevska, General Secretary of the Branch Union of Employees in the Textile Industry (Part of FTU)

**Age** is also a frequent discrimination ground, more overtly among private employers but also in a hidden form among public ones. The age-limit is among the most frequently stated criteria in the job announcements, and depending on the particular position it can range from 18 (usually 25) years with 40 being the limit that employers set with regard to applicants. Based on these types of information, there is a general perception among the public that young people find it easier to find employment, while older people face great problems.<sup>142</sup> Data show that this perception is half true, as research<sup>143</sup> shows that if controlling for education and other demographic factors, age is a significant determinant for employment, younger people being more prone to unemployment. The same research indicates that straightforward transition from education to work is typical for about a quarter of the young people. Hence, young people straight from the education system can face discrimination which is primarily based on the reluctance of employers to

<sup>142</sup> <http://novamakedonija.com.mk/NewsDetal.asp?vest=21312858219&id=9&prilog=0&setIzdanie=22504>

<sup>143</sup> Youth and the Labour Market, Reactor-research in action, 2012.



hire people they believe have little or no practical experience, even when the criteria of 'work experience' is not stated in the job announcement.

Still, the greatest discrimination is faced by men and women over 50, primarily when it comes to finding employment, but also if they are already employed, when employers can in different ways show the employee that s/he is unwanted, by, for example re-assigning him/her to a more distant job position (see Case Study 10).

### Case Study 10

#### *Discrimination on the grounds of age*

The CAD had a case where a person claims to be discriminated on the grounds of age, in the area of labour relations. Specifically, the person states to have been offered a new job contract, according to which he is to be re-assigned to a work position 170 km away from his place of residence. At the same time, he emphasized that he has only 1 year and 7 months until retirement.

After analyzing the evidence provided, discussing with the claimant, informing the potential discriminator and reviewing his response the Commission determined harassment on the grounds of age. As a result, the employer agreed to change the contract and take the employee to his initial job position, which is in his area of living.

Source: Annual Report of the Work of CAD for 2011

While in the above described situation the recommendation of the Commission was respected, since the Labour Law does not provide financial fines for employers discriminating on the grounds of age, the motivation of employers to pay more attention to this principle can be problematic.

**People with disability** also face numerous forms of discrimination when it comes to employment. In general, as a survey<sup>144</sup> shows, only about one third of the physically disabled people are employed, almost a quarter are actively looking for a job while the rest (about one half) are not looking for job. Although the Law on Employment of Disabled Persons offers benefits for employers

<sup>144</sup> [http://www.unifem.sk/uploads/doc/STILMstudy\\_EN.pdf](http://www.unifem.sk/uploads/doc/STILMstudy_EN.pdf)

employing disabled persons<sup>145</sup>, the majority of employed respondents indicated that there are abuses of these benefits, in the form of: inadequate working hours, inadequate salary etc.

As participants in a public debate on employment of persons with disability noted:

'Laws are excellent, but there is a number of abuses with regards to their implementation. (...) We haven't been paid in months, we are being given inappropriate work positions, we have been registered for one position and then made do something else.'<sup>146</sup>

However, despite common perceptions of abuse of benefits, only a quarter of the employed respondents in the Brima Gallup survey felt discriminated at the work place. Strikingly, more than half stated they do not know the mechanisms for protection from discrimination on the ground of disability and in general don't believe in the functioning of the system for protection from discrimination on the ground of disability in the employment area.<sup>147</sup>

People with intellectual disability face even more serious discrimination with regards to their employment prospects, bearing in mind that the system is sometimes structured in a way to indirectly support their unequal treatment. For example, if a person is diagnosed with an intellectual disability, the family is entitled to financial assistance because the person will have difficulties finding employment and earning a living. However, if assessed with borderline intellectual disability, the family does not receive assistance since it is believed that the person can work and receive an income. However, in reality, employers would hesitate about employing people with borderline intellectual disability which makes certain families prone to 'downgrading' their disability in order to be able to receive assistance.<sup>148</sup>

As mentioned above, in the public sector, the most frequent ground for discrimination is **political affiliation** (sometimes coupled with **ethnic background**,

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<sup>145</sup> Granting irretrievable funds to the employers for employment at indefinite time of unemployed disabled people up to the amount of 20 average salaries in the Republic of Macedonia of the previous year, i.e. 40 average salaries in the Republic of Macedonia of the previous year before employment and for the employment of a totally blind and a person with physical disabilities, who, due to the mobility needs a wheelchair; adaptation of the work facilities where the person with disabilities is to work with the amount up to 100,000 MKD, and the same can be reused, if the technical-technological process or the kind and the degree of the disability require that; purchasing equipment for the amount of 200 average salaries in the Republic of Macedonia of the previous year; tax exemption and providing means for taxes; and financial support at working.

<sup>146</sup> <http://www.sakamznammozam.gov.mk/default.aspx?mld=38&eventId=11956&lId=1>

<sup>147</sup> [http://www.unifem.sk/uploads/doc/STILMstudy\\_EN.pdf](http://www.unifem.sk/uploads/doc/STILMstudy_EN.pdf)

<sup>148</sup> Interview with Rosica Koleva, President of the Association for Support of Persons with Down Syndrome 'Sinolicka', 11.06.2012

especially after the OFA<sup>149</sup>).<sup>150</sup> The forms in which this is done are numerous and can be evidenced from the recruitment process, when the criteria of ‘political affiliation’ though not stated is implied; to the re-systematization practices when the politically inappropriate employees can be assigned to a lower position, position which is not in line with their educational/professional background and even dismissed under the explanation that their position does not exist within the new systematization.<sup>151</sup> Discriminatory practices can often be coupled with mobbing (see Case Study 11).

### Case Study 11

#### *Alleged political affiliation – cause of re-assignment*

A secondary school teacher in Macedonian language filed a petition to the CAD claiming to have been discriminated on the ground of political affiliation by the director of the school. She was employed by the school in 2000, as a teacher in Macedonian language. However, shortly after the director came into office, she was re-assigned as a school librarian. The teacher claimed to be working in below the standard conditions, in a room where in winter the temperature was 6 degrees C, while in summer - the windows did not have blinds. In addition, the claimant was made to work through the summer break, although students were not informed that the library was opened and there was no work to be performed.

The director of the school was contacted for information during the investigation process, but did not respond. The CAD, apart from discussing the issue with the claimant went to see the conditions in the school and was convinced in the conditions described.

CAD reached a decision that the school director had committed an act of direct discrimination, and requested for the teacher to be returned to the previous position. They urged him to refrain from future acts of harassment, enable proper working conditions, and treat the claimant equally with other employees with regards to working hours and use of holidays.

Source: Annual Report of the Work of CAD for 2011

While CAD has resolved certain cases of discrimination on the ground of political affiliation in the interest of the claimant, they did not find discrimination in others, rather similar to the one stated above (see Case Study 12).

<sup>149</sup> The Ohrid Framework Agreement signed after the 2001 conflict includes the aspect of ‘equal and just representation’ of all communities which implied increasing the number of employees from non-majority communities in the public sector institutions.

<sup>150</sup> Annual Report of the Ombudsman for 2011, <http://www.ombudsman.mk/ombudsman/upload/documents/2012/Izvestaj%202011-MK.pdf>

<sup>151</sup> See more in: How to Eliminate Discrimination in the Public Sector, CRPM, 2011.

## Case Study 12

### *An alleged political affiliation – a cause of re-location*

A teacher from a primary school from Eastern part of the country was re-located to a school in the village XX after the local elections in 2009. She claims that her removal from school is an act of discrimination on the grounds of political affiliation. Specifically, she was a very good and respected teacher with 21 children in the class, until after the elections one day before the start of the school year she received a decision for changing systematization requiring her to switch job posts with teachers from the village school, who only had 2 students in the class. While formally it was a legal act, she claimed that the reasons for her removal were grounded in her son's affiliation with the opposition political party. The teacher reports to have been coerced with the promise to be given a contract for tenure.

She filed a complaint to CAD, the outcome of which was that there isn't discrimination involved. Unsatisfied with the decision, she filed complaints before the Ombudsman's office in Shtip and at the same time the court. However, since the rules oblige the Ombudsman to terminate a procedure if the same case is being reviewed by the court, they did not proceed reviewing the claim.

Source: Office of the Ombudsman in Shtip

Despite the numerous cases processed by the Ombudsman, the Commission and the courts, the Labour Inspection reports that they did not receive either oral or written claims from employees and persons who have participated in job announcements/selection process that they were victims of discrimination. Also, during the regular inspections of companies, they did not find violations of the provisions of the Labour Law regulating discrimination.<sup>152</sup>

### **Regional initiatives**

Discrimination in the area of employment is perceived as the most common in all analyzed municipalities. However, it is frequently confused with other occurrences, such as certain aspects of the breach of employees' rights (e.g. overtime work, mobbing, etc.). In this regard, the ground of discrimination is missing (e.g. do only women in textile factories stay overtime, or is it a general policy of the company regardless of the characteristics of employees). This is a rather concerning fact bearing in mind that some interviews were with representatives of Equal Opportunities Committees (EOCs), courts and other

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<sup>152</sup> Information from the Labor Inspection received on 11.06.2012.

bodies whose function is protection from discrimination. The EOCs mainly track whether the employment of men and women is equal (percentage-wise) and if there are sufficient representatives of women in the administration. They rarely go beyond this formal requirement into assessing employment procedures, on-the-job practices and the overall anti-discrimination procedures of companies.

### **Social inclusion measures**

The most comprehensive social inclusion measures are implemented by the **Ministry of Labour** and the **Employment Service Agency**, which continuously include supportive measures for vulnerable groups in the Annual Action Plans. Specifically, the program for **subsidising employment** covers: children without parents, people with disabilities, single parents (young or with 3 or more children), parents of SEN children, elderly persons (55-64 years), young people and victims of domestic violence. In order to minimize the potential manipulations, the plans include specific criteria which need to be fulfilled by the employers in order to be eligible to receive subsidy.<sup>153</sup> In addition, the Internship program of the Agency is another mechanism aiming to provide unemployed young people (below 27 years) with skills needed for the labour market.<sup>154</sup> Finally, there is a separate action plan, in the frames of the **Ministry of Labour**, for supporting Roma women, part of which includes interventions for supporting their employment prospects, through informal education activities.

With regards to local initiatives, the municipality of Bitola in their Action Plan on Employment (2009-2010) have identified two groups in need of support for employment, specifically the physically disabled persons (through assessing the possibilities for employment in the printing and metal industry) and women (through activities for developing entrepreneurship).<sup>155</sup> In addition, the Municipality of Konce in their Strategy for social inclusion social protection and alleviating poverty emphasises the problems encountered with people with disabilities with regards to the difficult access to work place and proposed measures for reducing the physical and social barriers for their employment, accompanied with active employment measures.

In the public institutions, the most widely used social inclusion measure is the application of the principle for equal and just representation of non-majority communities.<sup>156</sup>

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<sup>153</sup> Operative plan for active employment measures 2010, Ministry of Labour and Social Policy.

<sup>154</sup> Operative plan for active programs and employment measures for 2011, Ministry of Labour and Social Policy; Operative plan for active programs and employment measures for 2012-13, Ministry of Labour and Social Policy.

<sup>155</sup> Employment Action Plan (2009-10) Municipality of Bitola.

<sup>156</sup> <http://www.ombudsman.mk/ombudsman/upload/documents/2012/Izvestaj%202011-MK.pdf>

#### 4. Conclusions and Recommendations

Notwithstanding the positive influence brought by the adoption of the LPPD, there is a need of its promotion on local level as well as strengthening of the protection offered to the victims. As explained in section II, **there is lack of knowledge of the LPPD** among the local administration which has to be seriously considered in both government's communication strategy and the civil society which deals with the matters related to discrimination. Besides the perceived need for promotional and awareness building activities, LPPD in its current structure does not afford neither comprehensive nor effective protection to the victims. As such there are several amendments which have to be undertaken in order to strengthen the protection offered to the actual victims as well to advance the capacities of CAD to secure legal security and effectiveness of its operations. The current report intends to set the policy agenda of both central and local governments and other non-state actors (civil society and private sector) in their joint efforts to further meet the EU accession criteria and to support that process with an in-depth analysis and set of policy and practical recommendations in favor of sustaining the values of democracy, rule of law and human rights protections and promotion in Macedonian society.

However the report tends to be also constructively critical to the extent of identifying problematic areas in the antidiscrimination legislation enforcement while trying to link those with a set of practical and policy recommendations towards the additional administrative, expert and network capacities to be further built in public institutions, civil society and private sector. It is believed from all experts involved in the process of the current report preparation and also reported by all field workers and respondents that the issue of anti-discrimination should be further incorporated in the country's national policy agenda and further integrated in all related to it legislation and national strategic documents.

Following the analysis of the European and national legislation, the current operations and capacities of national institutions engaged in the process of the existent anti-discrimination law enforcement, analyzing individual cases of discrimination on various grounds and the role of civil society and private sector, the current report came up with a set of policy recommendations combined with practical measures which can be further used as a basic reference of all interested parties (government, private sector, civil society, donors) in their individual and coordinated efforts to improve the country's legal, institutional and administrative environment in relation to all matters related to protection of its citizens against discrimination. The conclusions and recommendations of the report also aim to support genuinely the overall monitoring of the progress of the government of Macedonia and other related institutions towards the country full EU accession.

#### 4.1. Recommendations to the Central Government and the Parliament

The various anti-discrimination provisions related to protection from discrimination on different grounds, which in most cases are enumerated in detail in the legislation acts, may seriously confuse and hinder the potential victims of discrimination, human rights defenders and justice authorities in law enforcement, and may eventually lead to failure of protection from discrimination. The unification and consolidation of the existent national legal regulations is needed to be improved in order to facilitate the discrimination protection process and make it accessible, understandable and applicable. Further efforts are also needed, in the context of the European integration process, to fully align the national legislation with the *acquis* in the anti-discrimination area and to be ready to link this legal improvement with both human and financial resources which will help its follow up immediate and effective law enforcement.

##### Law for Prevention and Protection against Discrimination:

There is a widely spread criticism for the absence of explicit enumeration of the ground of sexual orientation in Article 3 of the LPPD which deals with the grounds protected from discrimination. Although, this ground was de facto protected in an opinion issued by CAD, there is a need for **incorporation of the ground of “sexual orientation”** in Article 3 of the LPPD. Furthermore, the text of the Law does not regulate the relations between the CAD and other bodies/courts with anti-discrimination mandate. In order to avoid duplication of human resources as well as to save time, the Law should **specify the relations of CAD and the Advocate for equal opportunities and the Courts**. Moreover, some **vague parts of the text of the Law should be clarified**. The Law in several occasions refers to a “competent body” without clarifying which is that body. As such this provision allows for “passing the ball” from one institution to another. Last but not least, the burden of proof should be amended and **the requirement for the alleged victim to present evidence should be deleted**.

##### Commission against Discrimination

The CAD is entitled to issue only opinions and recommendations, and although it claims that most of its recommendations have been respected, there is a perceived need for **strengthening CAD’s powers**. In that light, the CAD should be empowered to deliver legally binding decisions. Further, the **requirements for becoming a Commissioner should be tightened** and provision on prohibition of parallel employment in state bodies should be incorporated. The **Commission should be professional** and with a **permanent Secretariat which will provide technical assistance and expert opinion**. In addition, the **local accessibility to and visibility of CAD should be enhanced** by using already established local structures, such being the regional Offices of the Ombudsman or the municipal Commissions for Equal Opportunities between Women and Men. Lastly, the

**financial independence of the CAD should be strengthened and consequent technical assistance related to its further capacity and awareness building should be requested by the European Commission as part of the EU accession negotiations.**

CAD is encouraged to organize at least once a year (preferably with greater frequency) consultations with CSOs who represent potentially vulnerable and/or affected by discrimination individual citizens so as to get their feedback on non-registered cases related to discrimination, general attitudes, knowledge and awareness of all those towards the effectiveness of the anti-discrimination legislation enforcement in the country. CAD is encouraged to act as an associate partner of CSOs in their project development efforts so as to secure additional non-state funding for anti-discrimination national or local awareness campaigns, pro bono legal representation, one stop regional units through which individual cases of discrimination, especially at rural level, on various grounds, should be initially registered, consulted and assisted with information and legal advice. It is also recommended that on an annual or bi-annual base part of CAD state budget should be agreed on and dedicated to national awareness building campaigns which will further not only increase the sensitiveness of employers and employees towards issues related to discrimination but also sustain their knowledge on their rights and obligations under the existent anti-discrimination and other labour legislation.

CAD is encouraged, in the context of the European integration process, to regularly study the experience of other fellow Commissions on anti-discrimination, especially, in the new EU neighbouring member states, with a view of achieving highest possible compatibility of its national legislation drafting and enforcement practices in the area of anti-discrimination with those of its experienced EU counterparts.

### **Other bodies with anti-discrimination mandate**

The existing system for recording of cases filed before the Ombudsman's offices as well as in the Courts should be improved. For instance, when a person is alleging discrimination at the work place, most times, the case is recorded as "labor relations" case and not as discrimination. With the omission to structure records by areas and grounds, the process does not reveal the real number of people alleging that they have been discriminated against. Furthermore, additional supporting tools to be further used by stakeholders should be developed in order to ease the distinction between cases of discrimination and cases of breach of other human (workers', patients', etc.) rights.

### **Other institutions engaged in the process of anti-discrimination legal drafting, enforcement and promotion**

The training of magistrates on anti-discrimination provisions and procedures



is highly recommended on the one hand as additional capacity building of judicial system personnel engaged in the LPPD enforcements and on the other hand - as a part of the mandatory program of the Academy for Training Judges and Prosecutors. The magistrates need to be acquainted with European and national legislation on discrimination as well as with the practice of the Court of Justice of the European Union in Luxembourg regarding the application of those legal regulations. Special long-term training programme can be initiated in favor of central administration in line ministries and local authorities, employers' organizations and media representatives so as to further raise their awareness in the field of antidiscrimination as well as introduce the existent anti-discrimination provisions and procedures, national case studies related to their successful or relatively successful application and last but not least - the overall citizens' perception of this policy domain.

#### **4.2. Recommendations to the Local government**

The current composition of municipal commissions for equal opportunities, with most of their members being neither gender sensitive nor interested in gender issues, is inadequate. There is an obvious need for education and sensitization on the members of these commissions as well as for awareness raising campaigns for general population on local level. The local commissions should take proactive measures to promote the concept of gender equality and to make it understandable for each individual. In that light, the municipal commissions have to strengthen their capacities, increase their motivation and take active measures for future project design and implementation in that area.

#### **4.3. Recommendations to civil society**

The civil society sector in the country has been actively involved in anti-discrimination and human rights promotion. However, most civil society organizations are based in the capital city of Skopje and other larger cities. In that light, the field research identified some areas, predominantly rural, where there are almost no activities for promotion of the concept of equality, non-discrimination and human rights. Therefore, the CSOs should increase their involvement in activities in rural areas as well as urban areas where there are not local organizations with capacity and motivation to operate in this field. The CSOs, especially those who are serving affected by discrimination target groups, are strongly encouraged to register on regular base cases of discrimination on various grounds and to send those to the Commission against Discrimination for further reference. CSOs are also encouraged to act in a more consistent and visible manner as credible and reliable intermediaries between the individual citizens affected by discrimination and the respective state bodies responsible for anti-discrimination legislation enforcement. That intermediation can include

awareness and confidence building joint initiatives in the case of promotion of the rule of law in general and the potential and contents of the existent anti-discrimination law in particular, regular introduction of individual citizens to the respective legal procedures for registering discrimination cases as well as offering pro bono legal representation assistance.

#### **4.4. Recommendations to private sector and employers' unions**

The private sector and the employers' unions need to improve and regularly upgrade their internal HR policies with a view to prevention of any cases on most common discrimination grounds such as sex, age, ethnicity, disability whenever employment is concerned. They should also encourage their employees to be better aware of their labour rights as well as rights incurred from respective anti-discrimination legislation in the country so as to secure consistent and visible internal corporate management self-regulation systems. Private sector representatives are encouraged to get access to mediation and other out-of-court intermediation assistance which can help solve cases of discrimination related to improper employment.

It is also recommended that employers should consider joint discussions and training initiatives with trade unions on integrating equal opportunities and other social inclusion and labour protection mechanisms which can avoid and or/regulate cases related to discrimination.

#### **4.5. Recommendations to individual citizens**

Having knowledge of one's own rights is the key pre-prerequisite for effective legislative enforcement, human rights protection and violation prevention, regardless of the sector regulated. Individual citizens, especially those who live in rural areas and are less educated, have less access to information or suffer from other social deficits, are strongly encouraged to get acquainted with the existent anti-discrimination law in the country and to refer to it whenever they find themselves in a situation which might lead to serious violation of their social, economic and personal rights. It is important to know that citizens themselves are as responsible for their human rights protection as the state institutions, and they should be both aware and fully equipped with the corresponding knowledge, information or at least possess a positive attitude towards the existent legislative anti-discrimination regulations, which can help avoid and prevent them from falling into situations which lead to their victimization, discrimination and inequality.

#### **4.6. Recommendation to donors**

The current report also targets national and international (multi-lateral and bilateral) donors represented in the country which support its democratization and advancement of institutions, legislation and citizens' involvement. Due to the initial stage of both citizens' awareness on issues related to anti-discrimination, the newly adopted national LPPD enforcement, promotion and further integration into the legal system of the country, the latter's ongoing efforts towards its full EU membership, it is highly recommended to donors, incl. the European Commission, to include the area of anti-discrimination as an explicitly defined area of support as part of their strategic priorities in the human right protection and promotion. Moreover and based on its field research and case studies the report recommends to donors to allow for the public bodies entitled to enforce the respective national legislation related to discrimination to act as either eligible partners or main applicants of potential future joint projects. The latter might take the form of awareness, capacity, network and research initiatives which can cover central, rural and urban areas in their joint efforts to build better understanding, coordination and cooperation between citizens and institutions vis-à-vis matters related to discrimination.

